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REVISED STATUTES

OF

WYOMING.

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In Force January 1, 1887.

INCLUDING

THE DECLARATION OF INDEPENDENCE, THE ARTICLES OF CONFEDERATION, THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT OF WYOMING,

AND ALL

LAWS OF CONGRESS AFFECTING THE TERRITORIAL GOVERNMENT.

LIBRARY OF CONGRESS
LAW
DEPARTMENT
CITY OF WASHINGTON

PREPARED AND EDITED BY

JOHN W. BLAKE, WILLIS VAN DEVANTER,
AND
ISAAC P. CALDWELL,
Commissioners.

CHEYENNE, WYOMING:
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1887.

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AND
SUPREME COURT.

LAW

Wyo.
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1887

PREFACE.

Under an act of the Eighth Legislative Assembly, William W. Corlett, Isaac P. Caldwell and Clarence D. Clark prepared and submitted to the Ninth Legislative Assembly a compilation of all the Statute Laws of the territory. This compilation was adopted as an entirety, by an act approved March 10th, 1886, and all laws theretofore in force, and not included in such compilation, were repealed. It was provided, however, that this repealing clause should not affect any of the enactments of the Ninth Legislative Assembly, and that these enactments should take effect, and continue in force as if the compilation had not been adopted. The legislation of this session was more extended than that of any previous session, and its enactment wrought great changes in the then existing laws. These enactments were adopted without reference to the passage of the compilation, and were in many cases in direct conflict with its provisions. Fully one-third of this compilation was in effect repealed, and many changes were made in the provisions of the portions not repealed.

Under the act adopting the compilation, the undersigned were appointed as commissioners to prepare, edit, and superintend the publication of the Revised Statutes of Wyoming. The authority and duties of this commission were defined by the statute providing for their appointment. They were directed to incorporate into their work the compilation so adopted, together with all acts passed by the Ninth Legislative Assembly, and also all acts of Congress affecting or relating to the territory, and such other matter as in their judgment would tend to increase the value and usefulness of the work.

In preparing the statutes of the territory, the commission was directed to bring together all statutes and parts of statutes which from similarity of subjects ought to be brought together, omitting all redundant, obsolete, and repealed enactments, and to arrange the same under titles, chapters and sections, or other suitable divisions and sub-divisions.

The duties, thus devolving upon the commission, were of difficult performance, and great care has been taken to avoid a seeming assumption, under the statute, of either legislative or judicial powers. The authority and duties of the commission in effect include only the arrangement, and preparation for publication, of the statutes of the territory in force January 1st, 1887, that being designated as the time when the Revised Statutes should take effect.

This work has been done with care, and, it is hoped, in strict conformity with the legislative requirements.

The main divisions of the statute law have been designated as titles, and have been placed in alphabetical order, sub-divisions of the titles have been designated as chapters, and sub-divisions of chapters have been designated as sub-divisions. A table of contents, by titles, chapters and sub-divisions precedes the revision.

At the beginning of each title, chapter and sub-division, have been placed headings briefly expressing the matter contained in such divisions, and at the head of each section has been placed a head note stating, in brief form, the subject matter of the section.

The sections have been numbered in consecutive order from the beginning to the end of the revision. Following the section is a note containing a reference to the original statutes from which the section was taken. In the Code of Civil Procedure which has been taken substantially from that in force in the State of Ohio, references are made to the particular sections in the Revised Statutes of Ohio, from which the same has been taken. The Ohio Statutes to which reference is made are copiously annotated from the decisions of the courts of that State, and it is trusted that these references will afford a comparatively easy method of ascertaining the construction given to the code before its adoption here.

The commission has collected and arranged, just in advance of the statutes of the territory, most of the laws of Congress affecting the territorial government and regulating property rights in the territory.

In addition to the general index, there is a brief index to the laws of Congress. Both are the work of Frederic S. Hebard, Esq., who has labored diligently to prepare and arrange such an index as will enable those who use the book to find anything desired without trouble or delay. It is hoped that the index and table of contents, taken together, will furnish a complete key to the subject matter contained in the book.

To Frederic S. Hebard and Constantine P. Arnold, clerks to the commission, much credit is due for the efficient manner in which they have performed their part of the work.

Mr. Edward A. Slack, the publisher, has also merited the acknowledgment that the book is well and neatly printed and is a credit to his profession.

JOHN W. BLAKE,
WILLIS VAN DEVANTER,
ISAAC P. CALDWELL.

TABLE OF CONTENTS.

Preface 3

Declaration of Independence 7

Articles of Confederation 11

Constitution of the United States 17

Act of Congress Organizing the Territory of Wyoming ... 29

Laws of Congress Affecting the Territorial Government. 35

Index to Laws of Congress 51

Naturalization 55

Extradition 59

Records and Documents—Authentication—Admissibility 62

Rules of the Supreme Court of the Territory 64

Tables of Titles, Chapters, and Sub-divisions contained in the Revised Statutes of Wyoming 67

Revised Statutes of Wyoming 77

Authentication 908

Index 909

Appendix (Laws of Congress) .... After Index.

DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which nature and nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbid his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into a compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states: for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harrass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes upon us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond the seas to be tried for pretended offenses:

For abolishing the free system of English laws, in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war; in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

ARTICLES OF CONFEDERATION—1777.*

To all whom these presents shall come, we the undersigned delegates of the states affixed to our names send greeting.

Whereas the delegates of the United States of America in congress assembled did on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America agree to certain articles of confederation and perpetual union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in the words following, viz:

"*Articles of confederation and perpetual union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

ARTICLE I. The style of this confederacy shall be "The United States of America."

ARTICLE II. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in congress assembled.

ARTICLE III. The said states hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist

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*Congress *Resolved*, on the 11th of June, 1776, that a committee should be appointed to prepare and digest the form of a confederation to be entered into between the colonies; and on the day following, after it had been determined that the committee should consist of a member from each colony, the following persons were appointed to perform that duty, to-wit: Mr. Bartlett, Mr. S. Adams, Mr. Hopkins, Mr. Sherman, Mr. R. R. Livingston, Mr. Dickinson, Mr. M'Kean, Mr. Stone, Mr. Nelson, Mr. Hewes, Mr. E. Rutledge, and Mr. Gwinnett. Upon the report of this committee, the subject was, from time to time, debated, until the 15th of November, 1777, when a copy of the confederation being made out, and sundry amendments made in the diction, without altering the sense, the same was finally agreed to. Congress, at the same time, directed that the articles should be proposed to the legislatures of all the United States, to be considered, and if approved of by them, they were advised to authorize their delegates to ratify the same in the congress of the United States; which being done, the same should become conclusive. Three hundred copies of the articles of confederation were ordered to be printed for the use of congress; and on the 17th of November, the form of a circular letter to accompany them was brought in by a committee appointed to prepare it, and being agreed to, thirteen copies of it were ordered to be made out, to be signed by the president and forwarded to the several states, with copies of the confederation. On the 29th of November ensuing, a committee of three was appointed to procure a translation of the articles to be made into the French language, and to report an address to the inhabitants of Canada. etc. On the 26th of June, 1778, the form of a ratification of the articles of confederation was adopted, and, it having been engrossed on parchment, it was signed on the 9th of July on the part and in behalf of their respective states, by the delegates of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantation, Connecticut, New York, Pennsylvania, Virginia and South Carolina, agreeably to the powers vested in them. The delegates of North Carolina signed on the 21st of July, those of Georgia on the 24th of July, and those of New Jersey on the 26th of November following. On the 5th of May, 1779, Mr. Dickinson and Mr. Van Dyke signed in behalf of the State of Delaware, Mr. M'Kean, having previously signed in February, at which time he produced a power to that effect. Maryland did not ratify until the year 1781. She had instructed her delegates, on the 15th of December, 1778, not to agree to the confederation until matters respecting the western lands should be settled on principles of equity and sound policy; but, on the 30th of January, 1781, finding that the enemies of the country took advantage of the circumstance to disseminate opinions of an ultimate dissolution of the union, the legislature of the state passed at act to empower their delegates to subscribe and ratify the articles, which was accordingly done by Mr. Hanson and Mr. Carroll, on the 1st of March of that year, which completed the ratifications of the act; and congress assembled on the 2d of March under the new powers.

each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall upon demand of the governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States, in congress assembled, each state shall have one vote.

Freedom of speech and debate in congress shall not be impeached or questioned in any court, or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No state, without the consent of the United States, in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any psesent, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in congress assembled, for the defense of such state or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any state for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled.

Article IX. The United States in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever, which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress and lodged among the acts of congress for the security of the parties concerned; provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection or hope of reward;" provided also that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdiction as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated; establishing and regulating postoffices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces and directing their operations.

The United States in congress assembled shall have authority to appoint a committee to sit in the recess of congress, to be denominated "a committee of the states," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed and within the time agreed on by the United States in congress assembled; but if the United States in congress assembled shall on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

The United States in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in congress assembled.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Article X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the United States assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

Article XII. All bills of credit emitted, moneys borrowed and debts contracted by, or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every state shall abide by the determinations of the United States in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state.

And whereas it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual.

CONSTITUTION OF THE UNITED STATES,—1787.*

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

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*In May, 1785, a committee of congress made a report recommending an alteration in the articles of confederation, but no action was taken on it, and it was left to the state legislature to proceed in the matter. In January, 1786, the legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other states of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as, when ratified by them, will enable the United States in congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other states were represented, viz.: Delaware, New York, New Jersey and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York), expressing their unanimous conviction that it might essentially tend to advance the interests of the Union, if the states by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in congress assembled as, when agreed to by them and afterwards confirmed by the legislatures of every state, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the legislatures of those states which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven states having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to congress with a resolution stating how the proposed federal government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the constitution so framed, with the resolutions and letters concerning the same, to "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of government under the new constitution, it had been ratified by the conventions chosen in each state to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The president informed congress, on the 28th of January, 1790, that South Carolina had ratified the constitution November 21, 1789; and he informed congress on the 1st of June, 1790, that Rhode Island had ratified the constitution May 29, 1789. Vermont, in convention, ratified the constitution January 10, 1789, and was, by an act of Congress approved February 19, 1791, "received and admitted into this Union as a new and entire member of the United States."

The constitution commenced to operate the first Wednesday in March, 1789. *Owings* v. *Speed*, 5 Wheat., 420.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

*[Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of President of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

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*The clause included in brackets is amended by the 14th amendment, 2d section.

SEC. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish postoffices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of retainder or expost facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SEC. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, expost facto law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

["The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there shall remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

This clause has been superseded by the twelfth amendment.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the presiand vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

SEC. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint Ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill all vacancies that may happen during the recess of the senate by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. 4. The president, vice president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—*[between a state and citizens of another state;]—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, *[and between a state, or the citizens thereof, and foreign states, citizens or subjects.]

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SEC. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

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*The clauses in brackets are amended by the 11th amendment.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner effect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United Stated under this constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON,
Presidt and Deputy from Virginia.

New Hampshire.

JOHN LANGDON,
NICHOLAS GILMAN,

Massachusetts.

NATHANIEL GORHAM,
RUFUS KING.

Connecticut.

WM. SAML. JOHNSON,
ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL. LIVINGSTON,
DAVID BREARLEY,
WM. PATERSON,
JONA. DAYTON.

Pennsylvania.

B. Franklin,
Thomas Mifflin,
Robt. Morris,
Geo. Clymer,
Thos. Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouv. Morris.

Delaware.

Geo. Read,
Gunning Bedford, Jun.,
Richard Bassett,
Jaco. Broom.
John Dickinson.

Maryland.

James McHenry,
Dan'l Carroll,
Dan of St. Thos. Jenifer.

Virginia.

John Blair,
James Madison, Jr.

North Carolina.

Wm. Blount,
Hu Williamson,
Rich. Dobbs Spaight.

South Carolina.

J. Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.

William Few,
Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[ARTICLE II.]

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

[ARTICLE III.]

No soldier shall, in time of peace, be quartered in any house without the consent, of the owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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*The first ten amendments to the constitution of the United States were proposed to the legislatures of the several states by the first congress, on the 25th of September, 1789. They were ratified by the following states, and the notifications of ratification by the governors thereof were successively communicated by the president to Congress: New Jersey, November 20, 1789; Maryland, December 10, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790: Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of congress that the legislatures of Connecticut, Georgia and Massachusetts ratified them.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

[ARTICLE IX.]

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[ARTICLE XI.]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

The eleventh amendment to the constitution of the United States was proposed to the legislatures of the several states by the third congress, on the 5th September, 1794, and was declared in a message from the president to congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the states.

[ARTICLE XII.]

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and shall transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and the house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

The twelfth amendment to the constitution of the United States was proposed to the legislatures of the several states by the eighth congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the secretary of state, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the states.

ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

The thirteenth amendment to the constitution of the United States was proposed to the legislatures of the several states by the Thirty-eighth congress, on the 1st of February, 1865, and was declared, in a proclamation of the secretary of state, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six states, viz.: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina and Georgia.

ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SEC. 3. No person shall be a senator or representative in Congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The fourteenth amendment to the constitution of the United States was proposed to the legislatures of the several states by the thirty-ninth congress on the 16th of June, 1866. On the 21st of July, 1868, congress adopted and transmitted to the department of state a concurrent resolution, declaring that "the legislatures of the states of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina. Alabama, South Carolina, and Louisiana, being three-fourths and more of the several states of the Union, have ratified the fourteenth article of amendment to the constitution of the United States, duly proposed by two-thirds of each house of the thirty-ninth congress; Therefore, *Resolved*, That said fourteenth article is hereby declared to be a part of the constitution of the United States, and it shall be duly promulgated as such by the secretary of state." The secretary of state accordingly issued a proclamation, dated the 28th of July, 1868 declaring that the proposed fourteenth amendment had been ratified, in the manner hereinafter mentioned, by the legislatures of thirty of the thirty-six states, viz.: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11. 1866, (and the legislature of the same state passed a resolution in April, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Vermont, November 9, 1866; (Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same state passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868, and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland, March 23, 1867; and was not afterwards ratified by either state.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

SEC. 2. The congress shall have power to enforce this article by appropriate legislation.

The fifteenth amendment to the constitution of the United States was proposed to the legislatures of the several states by the fortieth congress, on the 27th of February, 1869, and was declared, in a proclamation of the secretary of state, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven states. The dates of these ratifications (arranged in the order of their reception at the department of state) were: From North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1866; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17-April 14. 1869, (and the legislature of the same state passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19. 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

ACT OF CONGRESS ORGANIZING THE TERRITORY OF WYOMING.

AN ACT TO PROVIDE A TEMPORARY GOVERNMENT FOR THE TERRITORY OF WYOMING.

(Approved July 25, 1868. Repealed by U. S. Rev. Stat. § 5596.)

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That all that part of the United States described as follows: commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude, and running thence west to the thirty-fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude; and thence north to the place of beginning, be, and the same is hereby, organized into a temporary government by the name of the Territory of Wyoming; *Provided*, That nothing in this act shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians; *Provided, further*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

Sec. 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Wyoming shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, with the advice and consent of the senate. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect, unless the same shall pass by a two-thirds vote, as provided in section six of this act ; he may grant pardons for offences against the laws of said territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon : he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

Sec. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the President of the United States, with the consent of the senate; he shall record and preserve all the laws and the proceedings of the legislative assembly hereinafter constituted and all acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first day of December in each year to the President of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of congress; and in case of the death, removal, resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or absence, or until another governor shall be appointed to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-seven, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made by the governor as nearly equal as practicable among the several counties or districts for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of their population, (excepting Indians not taxed), as nearly as may be, and the members of the council and house of representatives shall reside in, and be inhabitants of, the districts for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties or districts of the territory to be taken, and the first election shall be held at such times and places, and be conducted in such manner, as the governor shall appoint and direct, and he shall, at the same time, declare the numbers of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts for members of the council, shall be declared by the governor duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives; *Provided*, That in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie vote. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly; *Provided*, That no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

SEC. 5. *And be it further enacted*, That every male citizen of the United States above the age of twenty-one years *and* [including] persons who shall have declared their intention to become citizens of the United States, who shall have been a resident of the said territory at the time of the passage of this act, shall be entitled to vote at the first and all subsequent elections in the territory, and shall be eligible to hold any office in said territory; and the legislative assembly shall not at any time abridge the right of suffrage, or to hold office, on account of the race, color, or previous condition of servitude of any resident of the territory; *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath before a competent court of record their intention to become such, and shall have taken an oath to support the constitution and government of the United States.

SEC. 6. *And be it further enacted*, [That] the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the rights of private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value. Every bill which shall have passed the council and the house of representatives of said territory shall, before it becomes a law, be presented to the governor of the territory. If he approves, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be re-considered; and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 7. *And be it further enacted*, That all township, district and county officers not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory. The governor shall nominate, and by and with the consent of the council, appoint all officers not herein otherwise provided for and in the first instance the governor alone may appoint all such officers, who shall hold their office until the end of the first session of the legislative assembly; and he shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices for four years, unless sooner removed by the president, with the consent of the senate of the United States. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law; *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction and authority for redress of all wrongs committed against the constitution or laws of the United States or of the territory affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law, but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerks, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decision of said supreme court shall be allowed and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of said territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Dakota Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, with the consent of the senate, who shall receive the same fees and salary as is now received by the attorney of the United States for the Territory of *Dacotah* [Dakota]. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, with the consent of the senate, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Dakota, and shall, in addition, be paid two hundred dollars annually, as compensation for extra services.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice and associate justices, attorney, and marshal shall be nominated, and, by and with the advice and consent of the senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively, take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths when so taken shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings, and the chief justice, and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified; which said oath or affirmation shall be certified and transmitted by the person taking the same, to the secretary, to be recorded by him, as aforesaid, and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand dollars as governor and one thousand dollars as superintendent of Indian affairs; the chief justice and the associate justices shall each receive an annual salary of twenty-five hundred dollars, and the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be payable quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles' travel in going to and returning from the said sessions, estimating the distance by the nearest traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the legislative assembly of the Territory of Wyoming shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

SEC. 13. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States in the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections the time, place, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes of the qualified electors as hereinbefore provided, shall be declared by the governor elected, and a certificate thereof shall be accordingly given.

SEC. 14. *And be it further enacted*, That sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same.

SEC. 15. *And be it further enacted*, That temporarily and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for the said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts and assign the judges and alter the times and places of holding the courts as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted*, That the constitution and all laws of the United which are not locally inapplicable, shall have the same force and effect within the said Territory of Wyoming as elsewhere within the United States.

SEC. 17.* *And be it further enacted*, That this act shall take effect from and after the time when the executive and judicial officers herein provided for shall have been duly appointed and qualified; *Provided*, That all general territorial laws of the Territory of Dakota in force in any portion of said Territory of Wyoming at the time this act shall take effect, shall be and continue in force throughout the said territory until repealed by the legislative authority of said territory, except such laws as relate to the possession or occupation of mines or mining claims.

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*The executive and judicial officers of the territory were appointed on the seventh day of April, eighteen hundred and sixty-nine, and the last of said officers qualified on the nineteenth day of May following, on which day the organization of the territory was complete.

LAWS OF CONGRESS AFFECTING THE TERRITORIAL GOVERNMENT.

1. Boundaries of the territory.

All that part of the United States described as follows: commencing at the intersection of the twenty-seventh meridian of longitude west from Washington, with the forty-fifth degree of north latitude, and running thence west to the thirty-fourth meridian of west longitude, thence south to the forty-first degree of north latitude, thence east to the twenty-seventh meridian of west longitude, and thence north to the place of beginning, is organized into a temporary government by the name of the Territory of Wyoming. [Rev. stat., §1904.]

2. Constitution and laws of United States to apply to the territory.

The constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States. [Rev. stat., §1891.]

3. Rights of Indians not impaired—Reservations.

Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any territory now or hereafter organized until such tribe signifies its assent to the president to be embraced within a particular territory. [Rev. stat., §1839.]

4. Authority to regulate Indians.

Nor shall anything in this title be construed to affect the authority of the United States to make any regulations respecting the Indians of any territory, their lands, property, or rights by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such territory. [Rev. stat., §1840.]

5. Executive power.

The executive power of each territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. He shall reside in the territory for which he is appointed, and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the president can be made known thereon. He shall commission all officers who are appointed under the laws of such territory, and shall take care that the laws thereof be faithfully executed. [Rev. stat., §1841.]

6. Veto power of governor.

Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it with his objections to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment sine die, prevent its return, in which case it shall not be a law: *Provided*, That so much of this section as provides for making any bill passed by the legislative assembly of a territory a law, without the approval of the governor, shall not apply to the territories of Utah and Arizona. [Rev. stat., §1842.]

7. Secretary.

There shall be appointed a secretary for each territory, who shall reside within the territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. In case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence or until another governor is appointed and qualified. [Rev. stat., §1843.]

8. Secretary's Duties.

The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the president, and two copies of the laws, within like time, to the president of the senate and to the speaker of the house of representatives, for the use of congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the president. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the territory, within ten days after the passage of each act. [Rev. stat., §1844.]

9. Salaries of governor and secretary.

From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each. [Rev. stat., §1845.]

10. Legislative assembly.

The legislative power in each territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualification of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and of the house of representatives shall reside in the district or county for which they are respectively elected. [Rev. stat. §1846.]

11. Sessions of legislature limited to sixty days.

The sessions of legislative assemblies of the several territories of the United States shall be limited to sixty days' duration. [Vol. 1, Sup. Rev. stat., ch. 7, p. 586.]

12.—Extra sessions of legislature to be authorized by president.

Hereafter no extraordinary session of the legislature of any territory whereever the same is now authorized by law, shall be called until the reasons for the same have been presented to the president of the United States, and his approval thereof has been duly given. [Vol. 1, Sup. Rev. stat., p. 65, chap. 388, par. 1.]

13. Number and pay of members.

That from and after the adjournment of the next session of the several territorial legislatures the council of each of the territories of the United States shall not exceed twelve members and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides; and the president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time. [Vol. 1, Sup. Rev. stat., ch. 329, p. 379, par. 10.]

14. Mileage of members of legislature.

The members of the legislative assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona and Wyoming Territories shall each receive three dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route. [Rev. stat., §1942.]

15. Subordinate officers of territorial legislatures.

That the subordinate officers of each branch of said territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and door-keeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any territory. [Vol. 1, Sup. Rev. stat., ch. 329, p. 380, par. 10.]

16. Extent of legislative power.

The legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. [Rev. stat., §1851.]

17. Rights of private property and equal taxation secured.

In addition to the restrictions upon legislative powers of the territories contained in the preceding chapter, section eighteen hundred and fifty-one, [16], the legislative assemblies of Colorado, Dakota and Wyoming shall not pass any law impairing the rights of private property, nor make any discrimination in taxing different kinds of property; but all property, subject to taxation, shall be taxed in proportion to its value. [Rev. stat., §1925.]

18. Legislative power relating to corporations.

The legislative assemblies of the several territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue), loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable or scientific association. [Rev. stat., §1886; stat. 1st sess. 49th congress, p. 171, §5.]

19. Limitation on right of religious corporations to hold real estate.

No corporation or association for religious or charitable purposes shall acquire or hold real estate in any territory during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section. [Rev. stat., §1890.]

20. Towns, cities, and municipal corporations.

That the words "The legislative assemblies of the several territories shall not grant private charters or special privileges," in section eighteen hundred and eighty-nine [18] of the revised statutes of the United States shall not be construed as prohibiting the legislative assemblies of the several territories of the United States from creating towns, cities, or other municipal corporations, and providing for the government of the same and conferring upon them the corporate powers and privileges necessary to their local administration, by either general or special acts:

And that all general and special acts of such legislative assemblies heretofore passed creating and providing for the government of towns, cities or other municipal corporations, and conferring such rights, powers and privileges upon the same, as were necessary to their local administration, be and the same are hereby ratified and confirmed, and declared to be valid, any law to the contrary notwithstanding, subject, however, to amendment or repeal hereafter by such territorial assemblies.

But nothing herein shall have the effect to create any private right, except that of holding and executing municipal offices, or to divest any such right, or to make valid or invalid any contract or obligation heretofore made by or on behalf of any such town, city or municipal corporation, or to authorize any such corporation to incur hereafter any debt or obligation other than such as shall be necessary to the administration of its internal affairs. [Vol. 1, Sup. Rev. stat., p. 337, chap. 168.]

Modified by next section.

21. Enumerated restrictions on legislative power.

That the legislatures of the territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the names of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town-plats, streets, alleys, and public grounds.

Locating or changing county seats.

Regulating county and township affairs.

Regulating the practice in courts of justice.

Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables.

Providing for changes of venue in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village.

For the punishment of crimes or misdemeanors.

For the assessment and collection of taxes for territorial, county, township, or road purposes.

Summoning and impaneling grand or petit jurors.

Providing for the management of common schools.

Regulating the rate of interest on money.

The opening and conducting of any election or designating the place of voting.

The sale or mortgage of real estate belonging to minors or others under disability.

The protection of game or fish.

Chartering or licensing ferries or toll bridges.

Remitting fines, penalties, or forfeitures.

Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

Changing the law of descent.

Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the territories of the United States by the territorial legislatures thereof. [Stat. 1st Sess. 49th Congress, ch. 818, p. 170 §1.]

22. Subscriptions, etc., to corporations prohibited.

That no territory of the United States now or hereafter to be organized, or any political or municipal corporation or sub-division of any such territory shall hereafter make any subscription to the capital stock of any incorporated company, or company or association having corporate powers, or in any manner loan its credit to or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association. [Stat. 1st Sess. 49th congress, ch. 818, p. 171, §2.]

23. Limitation upon territorial indebtedness.

That no law of any territorial legislature shall authorize any debt to be contracted by or on behalf of such territory except in the following cases: To meet a casual deficit in the revenues, to pay the interest upon the territorial debt, to suppress insurrections, or to provide for the public defense, except that in addition to any indebtedness created for such purposes, the legislature may authorize a loan for the erection of penal, charitable or educational institutions for such territory, if the total indebtedness of the territory is not thereby made to exceed one per centum upon the assessed value of the taxable property in such territory as shown by the last general assessment for taxation. And nothing in this act shall be construed to prohibit the refunding of any existing indebtedness of such territory or of any political or municipal corporation, county, or other sub-division therein. [Stat. 1st sess. 49th congress, ch. 818, p. 171, §3.]

24. Limitation upon municipal indebtedness.

That no political or municipal corporation, county, or other sub-division in any of the territories of the United States shall ever become indebted in any manner or for any purpose to any amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such corporation, county, or sub-division, to be ascertained by the last assessment for territorial and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount given by such corporation shall be void: That nothing in this act contained shall be so construed as to affect the validity of any act of any territorial legislature heretofore enacted, or of any obligations existing or contracted thereunder, nor to preclude the issuing of bonds already contracted for in pursuance of express provisions of law; nor to prevent any territorial legislature from legalizing the acts of any county, municipal corporation or sub-division of any territory as to any bonds heretofore issued or contracted to be issued. [Stat. 1st sess. 49th congress, ch. 818, p. 171, §4.]

Sec. five was an amendment and re-enactment of section 1889 of Rev. Stat., see 18 above.

25. Reservation of congressional authority.

That nothing in this act contained shall be construed to abridge the power of congress to annul any law passed by a territorial legislature, or to modify any existing law of congress requiring in any case that the laws of any territory shall be submitted to congress. [Stat. 1st sess. 49th congress, ch. 818, p. 171, §6.]

26. Laws in conflict with preceding sections void.

That all acts and parts of acts hereafter passed by any territorial legislature in conflict with the provision of this act shall be null and void. [Stat. 1st sess. 49th congress, ch. 818, p. 171, §7.]

27. Seat of government; how changed.

The seat of government of the Territories of New Mexico, Utah, Washington, Colorado, Dakota, Arizona and Wyoming may be changed by the governors and legislative assemblies thereof, respectively. [Rev. stat., §1944.]

28. Members of legislature prohibited from holding certain offices.

No member of the legislative assemble of any territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any territory. The exception of postmasters shall not apply in the Territory of Washington. [Rev. stat., §1854.]

29. Prohibition of extra compensation to certain officers—Secretary's fees.

No law of any territorial legislature shall be made or enforced by which the governor or secretary of a territory, or the members or officers of any territorial legislature are paid any compensation other than that provided by the laws of the United States; *Provided*, That for the performance of all official duties imposed by territorial legislatures, and not provided for in the organic act, the secretaries of the territories respectively shall be allowed such fees as may be fixed by the territorial legislatures. [Rev. stat., §1855; Vol. 1, Sup. Rev. stat., Ch. 329, p. 380.]

30. Time and place of holding elections.

After such first election, however, the time, place and manner of holding elections by the people in any newly-created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory. [Rev. stat., §1848.]

31. Apportionment.

The apportionment of representation, which the governor is authorized to make by section eighteen hundred and forty-seven, in the case of a territory hereafter erected by congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new territory, as well as in all territories now organized, the legislative assemblies, respectively, may re-adjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner from time to time, as they may deem just and proper; but the number of each house, as authorized by law, shall not be increased. [Rev. stat. §1849.]

Sec. 1847 refers only to territories hereafter organized.

32. Election of justices of the peace and militia officers.

Justices of the peace and all general officers of the militia in the several territories shall be elected by the people in such manner as the respective legislatures may provide by law. [Rev. stat. §1856.]

33. Appointment and election of other officers.

All township, district and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each territory, shall appoint; but, in the first instance, where a new territory is hereafter created by congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly. [Rev. stat., §1857.]

34. Vacancies, how filled.

In any of the territories, whenever a vacancy happens, from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission which shall expire at the end of the next session of the legislative council. [Rev. stat., §1858.]

35. Vacancy in office of justice of the peace.

That when from any cause there shall be a vacancy in the office of justice of the peace in any of the territories of the United States, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the governor and legislative assembly of such territory; *Provided*, That such appointee, or person elected to fill such vacancy, shall hold office only until his successor shall be regularly elected and qualified as provided by law. [Vol. 1, Sup. Rev. stat., chap. 56, p. 515.]

36. Qualifications for voting and holding office.

At all subsequent elections, however, in any territory hereafter organized by congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each territory; subject nevertheless to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the constitution and government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allow- to vote in any territory by reason of being on service therein, unless such territory is and has been for the period of six months his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any territory. [Rev. stat., §1860.]

37. Delegate to congress.

Every territory shall have the right to send a delegate to the house of representatives of the United States, to serve during each congress, who shall be elected by the voters in the territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the house of representatives, with the right of debating, but not of voting. [Rev. stat., §1862.]

38. Time, place and manner of electing delegate.

The first election of a delegate in any territory for which a temporary government is hereafter provided by congress shall be held at the time and places and in the manner the governor of such territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized territories, such time, places, and manner of holding the election shall be prescribed by the law of each territory. [Rev. stat., §1863.]

39. Judicial power, how vested.

The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana and Wyoming shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. [Rev. stat. §1907.]

40. Jurisdiction of courts.

The jurisdiction, both appellate and original, of the courts provided for in section nineteen hundred and seven (39) and nineteen hundred and eight, shall be limited by law. [Rev. stat., §1866.]

Sec. 1908 referred to in this section does not apply to Wyoming.

41. Supreme court.

The supreme court of every territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the territory for which they are respectively appointed. [Rev. stat., §1864.]

42. Appellate jurisdiction of supreme court.

Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the territories, respectively, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court. [Rev. stat., §1869.]

43. Clerk of supreme court.

The supreme court of each territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed. [Rev. stat., §1870.]

44. Judicial districts and courts.

Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned. [Rev. stat., §1865.]

45. Assignment of judges.

The legislative assemblies of New Mexico, Washington, Colorado, Dakota, Arizona, and Wyoming Territories may assign the judges appointed for such territories, respectively, to the several judicial districts thereof, in such manner as each legislative assembly deems proper and convenient. [Rev. stat., §1918.]

46. Modifying judicial districts.

The legislative assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming Territories, respectively, may organize, alter, or modify, the several judicial districts thereof, in such manner as each legislative assembly deems proper and convenient. [Rev. stat., §1913.]

47. Federal jurisdiction of district courts.

Each of the district courts in the territories mentioned in the preceding section [57] shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each territory, as in other cases. [Rev. stat., §1910.]

48. Times and places of holding district courts.

The legislative assemblies of Colorado, Dakota and Wyoming Territories may fix or alter the times and places of holding the district courts for such territories, respectively, in such manner as each legislative assembly deems proper and convenient. [Rev. stat., §1919.]

49. Places of holding territorial courts—Expenses and jurisdiction.

The judges of the supreme court of each territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith. [Rev. stat., §1874.]

50. Clerk of district courts.

Each judge of the supreme court of the respective territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States. [Rev. stat., §1871.]

51. Register in chancery, residence and office.

Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held. [Rev. stat., §1872.]

52. Writ of habeas corpus.

The supreme and district courts of each territory and the respective judges thereof, except for Idaho and Montana, may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the United States in the District of Columbia. [Rev. stat., §1912.]

53. Chancery and common law jurisdiction.

The supreme court and the district courts, respectively, of every territory, shall possess chancery as well as common law jurisdiction. [Rev. stat., §1868.]

54. Code practice authorized—Trial by jury preserved.

Whereas, By the organic acts establishing several of the territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said territories which have authorized a mingling of said jurisdictions in the same proceeding, or of a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: *Therefore be it enacted, &c.*, That it shall not be necessary in any of the courts of the several territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law. [Vol. 1, Sup. Rev. stat., ch. 80, p. 12.]

55. When jurisdiction of justices of the peace denied.

No justices of the peace in any territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question. [Rev. stat., §1867.]

56. Limitation on jurisdiction of justices of the peace.

That justices of the peace in the Territory of Wyoming shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds three hundred dollars. [Stat. 2nd, ses. 48th congress, ch. 41, p. 287.]

57. Writs of error, etc., to United States supreme court.

Writs of error and appeals from the final decisions of the supreme court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, shall be allowed to the supreme court of the United States in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the supreme courts created by this title, or of any judge thereof, or of the district courts created by this title, or of any judge thereof, upon writs of habeas corpus involving the question of personal freedom. [Rev. stat., §1909.]

Modified by the two succeeding sections.

58. Limitation upon right of appeal, etc.

That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the supreme court of the District of Columbia, or in the supreme court of any of the territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars. [Stat. at large, vol. 23, ch. 355, p. 443.]

59. Cases involving law of congress, etc., appealable.

That the preceding section [58] shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute. [Stat. at large, Vol. 23, ch. 355, p. 443.]

60. Proceedings by which cases taken to supreme court of United States.

That the appellate jurisdiction of the supreme court of the United States over the judgments and decrees of said territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said supreme court have prescribed or may hereafter prescribe; *Provided*, That an appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the supreme court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said supreme court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal; *and provided further*, That the appellate court may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the supreme court of the United States where the record has already been filed. [Vol. 1, Sup. Rev. stat., p. 13, chap. 80, §2.]

61. United States attorney.

There shall be appointed in each territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. [Rev. stat., §1875.]

62. Marshals.

There shall be appointed a marshal for each territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years and until his successor is appointed and qualified, unless sooner removed by the president. [Rev. stat., §1876.]

63. Appointment of federal officers.

The governor, secretary, chief justice, and associate justices, attorney, and marshal of every territory shall be nominated, and by and with the advice and consent of the senate, appointed by the president. [Rev. stat., §1877.]

64. Oath of office.

The governor and secretary for each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new territory, as well as in all organized territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each territory. [Rev. stat., §1878.]

65. Salaries of judges.

The annual salary of the chief justice and associate justices of all the territories now organized shall be three thousand dollars each. [Rev. stat., §1879.]

66. Salary of attorney.

The salary of the attorney of the United States for each territory shall be at the rate of two hundred and fifty dollars annually. [Rev. stat., §1880.]

67. Salary of marshal.

The salary of the marshal of the United States for each territory shall be at the rate of two hundred dollars a year. [Rev. stat., §1881.]

68. When salaries to be paid.

The salaries provided for in this title, to be paid to the governor, secretary, chief justices and associate justices, district attorney, and marshal of the several territories, shall be paid quarter-yearly at the treasury of the United States. [Rev. stat., §1882.]

69. Fees of clerks, etc.

The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the territories of the United States shall be the same for similar services by such persons as prescribed in chapter sixteen, title "THE JUDICIARY," and no other compensation shall be taxed or allowed. [Rev. stat., §1883.]

70. No salary paid when officer is absent.

When any officer of a territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the president, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office. [Rev. stat., §1884.]

71. When salaries to commence—Oath to be taken in territory.

Hereafter payment of salaries of all officers of the territories of the United States appointed by the president shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such territory; and said oath shall hereafter be administered in the territory in which such office is held. [Vol. 1. Sup. Rev. stat. p. 206, chap., 88, par. 2.]

72. Certain officers forbidden to practice as attorneys.

No clerk, assistant or deputy clerk, of any territorial, district, or circuit court, or of the court of claims, or the supreme court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as solicitor, proctor, attorney, or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer. [Rev. stat., sec. 748.]

73. Penalty for violating preceding section.

Whosoever violates the preceding section [72] shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice, and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office. [Rev. stat., sec. 749.]

74. Contingent expenses for governor's office.

There shall be appropriated, annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, including the salary of the clerk in the executive departments of those territories. [Rev. stat., §1935.]

75. Expenses for printing laws, etc.

There shall be appropriated, respectively, for the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, and Wyoming, annually, a sufficient sum, to be expended by the secretary of each territory herein named, upon an estimate to be made by the secretary of the treasury, to defray the expenses of the legislative assembly and other incidental expenses; and the secretary of each territory above specified shall annually account to the secretary of the treasury for the manner in which such sum has been expended. [Rev. stat., §1939.]

76. Secretary to furnish annual estimates of expenses.

Hereafter it shall be the duty of the secretary of each territory to furnish estimates in detail for the lawful expenses thereof, to be presented to the secretary of the treasury on or before the first day of October of every year. [Vol. 1, Sup. Rev. stat., ch. 328, p. 45, par. 13.]

77. Limitation on printing expenses.

Hereafter no expense for printing exceeding three thousand seven hundred and fifty dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories. [22, Stat. at large, ch. 389, p. 236.]

78. Limitation on expenses of legislature.

No legislative assembly of a territory shall, in any instance or under any pretext, exceed the amount appropriated by congress for its annual expenses. [Rev. stat., §1888.]

79. Appropriations by United States for territory—Disbursement.

All accounts for disbursements, in the territories of the United States, of money appropriated by congress for the support of government therein, shall be settled and adjusted at the treasury department; and no act, resolution or order of the legislature of any territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the treasury. No payment shall be made or allowed, unless the secretary of the treasury has estimated therefor and the object has been approved by congress. No session of the legislature of a territory shall be held until the appropriation for its expenses has been made. [Rev. stat., §1886.]

80. U. S. penitentiary.

Any penitentiary which has been, or may hereafter be, erected by the United States in an organized territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the territory or district in which such penitentiary is situated. [Rev. stat., §1892; Vol. 1, Sup. Rev. stat., ch. 332, p. 49.]

81. Rules for their government.

The attorney general of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the attorney general. [Rev. stat., §1893.]

82. Expenses of penitentiary, from what fund payable.

The compensation as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers. [Rev. stat., §1894.]

83. Imprisonment in U. S. penitentiary.

Any person convicted by a court of competent jurisdiction in a territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States. [Rev. stat., §1895.]

84. Territorial prisoners may be confined out of territory.

That the legislative assemblies of the several territories of the United States may make such provision for the care and custody of such persons as may be convicted of crime under the laws of such territory, as they shall deem proper, and for that purpose may authorize and contract for the care and custody of such convicts in any other territory or state, and provide that such person or persons may be sentenced to confinement accordingly in such other territory or state, and all existing legislative enactments of any of the territories for that purpose are hereby legalized: *Provided*, That the expense of keeping such prisoners shall be borne by the respective territories, and no part thereof shall be borne by the United States. [Vol. 1, Sup. Rev. stat., chap. 235, p. 559, par. 4.]

85. School lands.

Sections numbered sixteen and thirty-six, in each township of the territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be reserved for the purpose of being applied to schools in the several territories herein named, and in the states and territories hereafter to be erected out of the same. [Rev. stat., §1946.]

86. University lands, restrictions upon sale, and use of proceeds.

That there be, and are hereby, granted to the territories of Dakota, Montana, Arizona, Idaho, and Wyoming respectively, seventy-two entire sections of the unappropriated public lands within each of said territories, to be immediately selected and withdrawn from sale and located under the direction of the secretary of the interior, and with the approval of the President of the United States, for the use and the support of a university in each of said territories when they shall be admitted as states into the Union:

Provided, That none of said lands shall be sold except at public auction, and after appraisement by a board of commissioners, to be appointed by the secretary of the interior: *Provided further*, That none of said lands shall be sold at less than the appraised value, and in no case at less than two dollars and fifty cents per acre: *Provided*, That the funds derived from the sale of said lands shall be invested in the bonds of the United States and deposited with the treasurer of the United States; that no more than one-tenth of said lands shall be offered for sale in any one year: that the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund; that no part of said fund shall be expended for university buildings, or the salary of professors or teachers, until the same shall amount to fifty thousand dollars, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to one hundred thousand dollars, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities. [Vol. 1, Sup. Rev. stat. p. 593, ch. 61.]

For location of lands under this section, see §§3719-3724 of the Revised Statutes of Wyoming.

87. Legalization of election of members of 9th legislative assembly—Apportionment for 10th assembly.

That the election of the members of the ninth legislative assembly of the Territory of Wyoming, at the general election held on the fourth day of November, eighteen hundred and eighty-four, subject to the filling of any vacancies that may have arisen or may arise, and legal contests, is hereby declared valid; and that the legislative assembly so elected is fully authorized to transact such business as belongs to the legislative assembly of said territory, and that all their acts shall be held to be as legal as if the territory had been regularly apportioned into council and representative districts; and the governor, secretary of the territory, and president of the council, shall act as a board of apportionment in said territory, for apportioning the members of the next legislative assembly thereof, and shall meet at the capitol of said territory, on the first Monday in September, Anno Domini eighteen hundred and eighty-six, and shall, or a majority of them, re-apportion the members of the council and house of representatives thereof, upon the basis of the voting population, as shown by the number of votes cast for delegate in congress in November eighteen hundred and eighty-four, allotting members of each house of the legislative assembly, to the different sections of the territory, pro rata, as nearly as practicable according to such population, and to that end may apportion when necessary, in joint council districts.

That sections two [88], three [89], and four [90], of an act providing for the reapportionment of the members of the legislatures in the territories of Montana, Idaho, and Wyoming, approved June third, eighteen hundred and eighty, be, and the same are hereby continued in force, so far as applicable to said territory, and shall be in force as a part of this act, except as herein modified and provided. [Stat. 1st sess. 49th congress, ch. 5, p. 2.]

88. Proclamation of apportionment—Election.

That the reapportionment so made by said boards shall be forthwith certified to by the members, or a majority thereof, making the same, and filed in the office of the secretary of the territory; and within ten days thereafter the governor shall issue his proclamation for an election of such members of the legislature so apportioned as aforesaid, specifying in such proclamation the apportionment so made to the different sections, and which election shall be held at the time and places as provided by law, and the returns to be canvassed as provided by the laws of said territories respectively. [Vol. 1, Sup. Rev. stat., p. 535, ch. 119, §2.]

89. Legislature may make new apportionment.

That the persons elected under such apportionment shall, when assembled at their respective capitals, at the time provided by law, and when duly qualified and organized, constitute the next legislative assembly in each of said territories, and shall be empowered to alter or amend the reapportionment for the members of the legislature so made, and at any time thereafter reapportion their respective territories in accordance with the population as the same may vary and change. [Vol. 1, Sup. Rev. stat., p. 535, ch. 119, §3.]

90. Assembling and pay of board of apportionment.

That the members constituting such boards of apportionment shall assemble at the capitals of their respective territories and complete their work on or before the first Monday in September, eighteen hundred and eighty, and they shall be allowed the same compensation per diem and mileage as are allowed to the presiding officers of the legislatures in such territories; which allowance shall be certified by the secretary of the territory to the proper officers of the United States treasury department, and the same shall be paid out of any moneys in the treasury not otherwise appropriated. [Vol. 1, Sup. Rev. stat., p. 535, ch. 119, §4.]

91. Proclamation of apportionment made pursuant to last four sections.

To the people of Wyoming: By virtue of the authority conferred upon me by an act of congress, entitled "An act to legalize the election of the territorial legislative assembly of Wyoming," approved January 19th, 1886; and also an act of congress entitled "An act providing for the re-apportionment of the members of the legislatures in the territories of Montana, Idaho, and Wyoming," approved June 3d, 1880; and also according to the provisions of an act of congress fixing the number of members that shall constitute the council and house of representatives of the several territories, approved June 19th, 1878: I, Francis E. Warren, governor of the Territory of Wyoming, do hereby make known and declare the following apportionment for members of the council and house of representatives of the territorial legislature, to be elected at the general election to be held on the first Tuesday in November next.

The county of Laramie shall constitute the first council district, and will elect three members of the council. The counties of Laramie and Crook shall constitute the second council district, and will elect one member of the council. The county of Albany shall constitute the third council district, and will elect two members of the council. The county of Carbon shall constitute the fourth council district, and will elect two members of the council. The county of Johnson shall constitute the fifth council district, and will elect one member of the council. The county of Sweetwater shall constitute the sixth council district, and will elect one member to the council. The counties of Fremont and Uinta shall constitute the seventh council district and will elect one member of the council. .The county of Uinta shall constitute the eighth council distritc and will elect one member of the council.

The county of Laramie shall constitute the first representative district and will elect seven members of the house of representatives. The county of Crook shall constitute the second representative district and will elect one member of the house of representatives. The county of Albany shall constitute the third representative district and will elect five members of the house of representatives. The county of Carbon shall constitute the fourth representative district, and will elect three members of the house of representatives. The county of Johnson shall constitute the fifth representative district and will elect two members of the house of representatives. The county of Sweetwater shall constitute the sixth representative district and will elect two members of the house of representatives. The county of Fremont shall constitute the seventh representative district and will elect one member of the house of representatives. The county of Uinta shall constitute the eighth representative district and will elect three members of the house of representatives.

In testimony whereof I have hereunto set my hand and caused the great seal of the territory to be hereto affixed.

Done at the City of Cheyenne, this seventh day of September, eighteen hundred and eighty-six.

(Signed) FRANCIS E. WARREN.
[SEAL] By the governor:
E. S. N. MORGAN,
Secretary of Territory.

[The laws of congress regulating the ownership of lands in the territories by aliens and corporations will be in an appendix following the index to the Revised Statues of Wyoming.]

INDEX TO THE LAWS OF CONGRESS

AFFECTING THE TERRITORIAL GOVERNMENT.

(The references are to the numbers at the beginning of each section.)

APPORTIONMENT—
- May be made by legislative assembly 31
- Board of, to consist of governor, secretary, and president of council 87
- Certificates of—governor shall issue proclamation 88
- Legislative assembly may re-apportion 89
- When board shall meet—compensation 90
- Proclamation of governor declaring 91

ATTORNEY, UNITED STATES DISTRICT—
- Term of office 61
- Shall be appointed by the president 63
- Salary of 66
- When salary paid 68
- Fees 69

BOUNDARIES—
- Of territory defined 1
- When Indian reservations not included in 3

CAPITAL—
- See seat of government

CHARTERS, PRIVATE—
- Shall not be granted by legislature 18

CHANCERY JURISDICTION—
- Possessed by courts 53
- And common law jurisdiction, under code 54

COMMON LAW—
- Courts shall have, jurisdiction 53
- And chancery jurisdiction under code 54

CONGRESS—
- Laws of, to apply to territory 22–5
- Delegate to, how elected, and rights in 37

CONSTITUTION OF UNITED STATES—
- To apply to territory 2

CORPORATIONS—
- Extent of legislative power in creating 18
- To be created by general acts 18
- Religious and charitable, limit of right to hold realty 19
- Municipal, special acts creating, confirmed 20
  - To be created by general acts 21
  - Amendments of charters of, prohibited 21
  - Cannot subscribe to corporate stock 22
  - Limitation upon incurring debt 22–24
  - May refund existing indebtedness 23

COURTS—
- Enumeration of those in which judicial power is vested 39
- Jurisdiction of, to be limited by law 40
- District courts, by whom held, term of, residence of judges of 44
  - Assignment of judges of 45
  - Judicial districts may be modified by law 46
  - Federal jurisdiction of, appeals from 47
  - Time and place of holding, may be fixed by law 48
  - Judges authorized to hold, expenses of, by whom paid 49
  - Clerk of 50
  - Clerk to be register in chancery, residence and office 51
  - May grants writs of habeas corpus 52
  - Shall possess chancery and common law jurisdiction 53
  - May have combined common law and chancery jurisdiction under code 54

COURTS—*Continued*,
- Supreme court, of whom to consist, annual term ... 41
  - Terms of office of justices of ... 41
  - Trials in, shall not be by jury ... 42
  - Writs of error, etc., to ... 42
  - Appellate jurisdiction of ... 42
  - Clerk of ... 43
  - Writs of error, etc., to supreme court of United States ... 57
  - Limitations upon right of appeal, etc., from ... 58
  - What cases appealable from ... 59
  - Proceedings in taking cases to supreme court of the United States ... 60

DEBTS—
- Limitation upon territory and municipal corporations in incurring ... 22–24
- Municipal corporations may refund existing ... 23

DELEGATE TO CONGRESS—
- How elected, rights of, in congress ... 37
- Time, place and manner of election determined by law ... 38

ELECTIONS—
- Time and place of holding elections shall be prescribed by territorial law ... 30

ELECTIVE FRANCHISE—
- Right of, guaranteed and restrictions upon ... 36

ELECTORS—
- Qualifications of ... 36

EXECUTIVE POWER—
- Vested in governor ... 5

GOVERNOR—
- Executive powers enumerated ... 5
- Term of office ... 5
- Veto power ... 6
- Salary ... 9
- Legislative power vested in ... 10
- Shall not be allowed extra compensation ... 29
- Officers he shall appoint ... 33
- Vacancies, he may fill by appointment ... 34
- Shall be appointed by the president ... 63
- Oath of office of ... 64
- When salary to be paid ... 68
- Contingent expenses of ... 74
- Shall be a member of board of apportionment ... 87
- Shall issue proclamation of election according to apportionment ... 88
- Proclamation of apportionment and election ... 91

HABEAS CORPUS, WRIT OF—
- May be granted by supreme and district courts ... 52

INDIANS—
- Reservations, when not within jurisdiction ... 3
- United States retains all control of ... 4

JUDICIAL POWER—
- How vested ... 39

JURY—
- Right of trial by, preserved ... 54

JUSTICES OF THE PEACE—
- Election of, may be provided for by legislative assembly ... 32
- Vacancies in office of, legislative assembly may provide manner of filling ... 35
- Judicial power vested in ... 39
- Shall not have jurisdiction in cases involving title to land ... 55
- Limitation upon jurisdiction of ... 56

JUSTICES OF THE SUPREME COURT—
- Shall be appointed by the president ... 63
- Oath of office ... 64
- Salaries of ... 65

LEGISLATIVE ASSEMBLY—
- May pass bill over veto of governor ... 6
- power of, in whom vested ... 10
- Of what to consist, qualifications of members, time of sessions ... 10
- Length of sessions ... 11
- Extraordinary sessions called only with approval of the president ... 12
- Number and pay of members ... 13
- Mileage of members ... 14
- Subordinate officers and their compensation ... 15
- Extent of legislative power ... 16

LEGISLATIVE ASSEMBLY—*Continued.*
- Restrictions upon power of ... 16–17–18–20–21–23–25
- Laws of, may be annulled or modified by congress ... 25
- Laws of, conflicting with laws of congress, void ... 26
- May change seat of government ... 27
- Members shall not hold certain offices ... 28
- Not allowed extra compensation ... 29
- May prescribe certain fees of secretary ... 29
- Shall prescribe time and place of holding elections ... 30
- May apportion territory ... 31
- May provide for election of justices of the peace and militia officers ... 32
- May provide for election of other officers ... 33
- May provide for filling vacancies in office of justice of the peace ... 35
- May prescribe qualifications of voters and office holders ... 36
- Shall prescribe time, place and manner of holding election of delegate to congress ... 38
- Shall limit jurisdiction of courts ... 40
- May assign judges to districts, and prescribe time and place of holding courts ... 44–45–48
- May modify judicial districts ... 46
- Estimate of expenses of ... 75
- Secretary shall furnish estimate of expenses of ... 76
- Limitation on printing expenses of ... 77
- Expenses of, shall not exceed amount appropriated by congress ... 78
- Has no authority to direct disbursement of United States funds ... 79
- Shall not hold session until appropriaton for, made by congress ... 79
- May provide for care of prisoners outside of territory ... 84
- Legalization of election of members of ninth session ... 87
- Appointment of members of ... 87–91

LEGISLATIVE POWER—
- In whom vested ... 10
- Extent of ... 16
- Restrictions upon ... 16–17–18–20–21–23–25

MARSHAL, UNITED STATES—
- Duties and powers, term of office ... 62
- Shall be appointed by the president ... 63
- Salary of ... 67
- Shall not practice as attorney ... 72
- When salary paid ... 68
- Shall have care of U. S. penitentiary ... 80
- Shall enforce rules for government of penitentiary, fees ... 81

MILITIA—
- Officers shall be elected by the people ... 32

NON-RESIDENTS—
- Restrictions upon taxation of lands of ... 16

OFFICERS—
- Territorial and others, how appointed or elected ... 33
- When appointed by the governor to fill vacancies ... 34
- Federal, shall be appointed by the president ... 63
  - Oath of office ... 64
  - Salaries of justices ... 65
  - Salary of attorney ... 66
  - Salary of marshal ... 67
  - When salaries to be paid ... 68
  - Fees of marshals, attorneys, and clerks ... 69
  - No salary paid when officer absent from territory ... 70
  - Salary to commence when officer sworn in, in territory ... 71
  - Who cannot practice law ... 72
  - Penalty for practicing law ... 73

OFFICE HOLDERS—
- Qualifications of and restrictions upon ... 36

PENITENTIARY—
- United States, shall be in care of marshal ... 80
- Rules for the government of, fixed by attorney general ... 81
- Expenses of, from what fund paid ... 82
- On what terms territorial prisoners received ... 83

PROBATE COURTS—
- Judicial power vested in ... 39

PRISONERS, TERRITORIAL—
- May be imprisoned in United States penitentiary ... 83
- May be imprisoned outside of territory ... 84

PRIVATE PROPERTY—
  No law shall be passed impairing right of........ 17
PRIVILEGES, SPECIAL—
  Shall not be granted by legislature........ 18
RESERVATIONS—
  Indian, when not within jurisdiction........ 4
SALARY—
  Of governor........ 9
  Of secretary........ 9
  Of justices........ 65
  Of United States district attorney........ 66
  Of marshal........ 67
SCHOOL LANDS—See university lands,
  What sections reserved........ 85
SECRETARY—
  Term of office and powers as acting governor........ 7
  Duties enumerated........ 8
  Salary........ 9
  Shall not be allowed extra compensation........ 29
  What fees of, fixed by legislative assembly........ 29
  Shall be appointed by the president........ 63
  Oath of office of........ 64
  When salary of to be paid........ 68
  Shall account for moneys appropriated for legislative assembly........ 75
  Shall furnish estimate of legislative expenses to secretary of treasury........ 76
  Shall be a member of board of apportionment........ 87
SEAT OF GOVERNMENT—
  How changed........ 27
TAXATION—
  Limitation upon legislative power of........ 16–17
TERRITORY—
  May refund existing indebtedness........ 23
  Limitation upon creating debts........ 22–23
UNITED STATES—
  Constitution and laws of, to apply to territory........ 2
UNIVERSITY LANDS—
  Proceedings to secure and disposition of proceeds of........ 86
VETO POWER OF GOVERNOR—
  When and how used........ 6
VOTERS—
  Qualifications of........ 36

NATURALIZATION.

(The section numbers are those of the Revised Statutes of the United States.)

SECTION.
2000. Protection to naturalized citizens in foreign states.
2165. Aliens how naturalized.
2166. Aliens honorably discharged from military service, admitted.
2167. Alien under 18 years of age at the time of arrival, how admitted.
2168. When widow and children of aliens become citizens.
2169. Aliens of African nativity or descent.
2170. Residence of five years indispensable.
2171. Alien enemies not admitted.
2172 Children of persons naturalized under certain laws, citizens.

SECTION.
2174. Naturalization of seamen.
5395. Taking false oath in naturalization proceeding.
5424. False personation in procuring naturalization.
5425. Using false certificate of citizenship.
5426. Using false certificate as evidence of right to vote.
5427. Aiding or abetting violation of preceding sections.
5428. Falsely claiming citizenship.
5429. Provisions apply to all courts.

Protection to naturalized citizens in foreign countries.

SECTION 2000. All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens.

Aliens, how naturalized.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty, of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the Uhited Stataes, one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegience and fidelity to any foreign prince, potentate, state, or sovereignty and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. [Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the revised statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.]

Aliens honorably discharged from military service.

Sec. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Minor residents.

SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make the application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years preceding it has been his bona-fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of declarants.

SEC. 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Aliens of African nativity and descent.

SEC. 2169. The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

Residence of five years in the United States.

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Alien enemies not admitted.

SEC. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Children of persons naturalized under certain laws to be citizens.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

Naturalization of seamen.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Taking false oath in naturalization.

SEC. 5395. In all cases where any oath or affidavit is made or taken under or by virtue of any law relating to the naturalization of aliens, or in any proceedings under such laws, any person taking or making such oath or affidavit who knowingly swears falsely, shall be punished by imprisonment not more than five years, nor less than one year, and by a fine of not more than one thousand dollars.

False personation, etc., in procuring naturalization.

SEC. 5424. Every person applying to be admitted a citizen, or appearing as a witness for any such person, who knowingly personates any other person than himself, or falsely appears in the name of a deceased person, or in an assumed or fictitious name, or falsely makes, forges, or counterfeits any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or who utters, sells, disposes of, or uses as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or sells or disposes of to any person, other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen, shall be punished by imprisonment at hard labor not less than one year, nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.

Using false certificate of citizenship, etc.

SEC. 5425. Every person who uses, or attempts to use, or aids, or assists, or participates in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud or otherwise unlawfully obtained; or who, without lawful excuse, knowingly is possessed of any false, forged, ante-dated, or counterfeited certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeited, with intent unlawfully to use the same; or obtains, accepts, or receives any certificate of citizenship known to such person to have been procured by fraud or by the use of any false names, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; and every person who has been or may be admitted to a citizen who, on oath or by affidavit, knowingly denies that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, shall be imprisoned at hard labor not less than one year nor more than five years, or be fined not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed.

Using false certificate, etc., as evidence of a right to vote.

SEC. 5426. Every person who in any manner uses for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, or certificate, judgment, or exemplification has been unlawfully issued or made; and every person who unlawfully uses, or attempts to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be punished by imprisonment at hard labor not less than one year nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.

Aiding or abetting violation of preceding sections.

SEC. 5427. Every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in the three preceding sections, or attempts to do any act therein made felony, or counsels, advises, or procures, or attempts to procure, the commission thereof shall be punished in the same manner and to the same extent as the principal party.

Falsely claiming citizenship.

SEC. 5428. Every person who knowingly uses any certificate of naturalization heretofore granted by any court, or hereafter granted, which has been or may be procured through fraud or by false evidence, or has been or may be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and every person who falsely represents himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be punishable by a fine of not more than one thousand dollars, or be imprisoned not more than two years, or both.

Provisions applicable to all courts of naturalization.

SEC. 5429. The provisions of the five preceding sections shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced.

EXTRADITION.

(The section numbers are those of the Revised Statutes of the United States.)

SECTION.

5270. Fugitives from the justice of a foreign country.
5271. Evidence on the hearing.
5272. Surrender of the fugitive.
5273. Time allowed for extradition.
5274. Continuance of provisions limited.
5275. Protection of the accused.

SECTION.

5276. Powers of agent receiving offenders delivered by a foreign government.
5277. Penalty for opposing agent, etc.
5278. Fugitives from justice of a state or territory.
5279. Penalty for resisting agent, etc.
5280. Arrest of deserting seamen from foreign vessels.

Fugitives from the justice of a foreign country.

SECTION 5270. Whenever there is a treaty or convention for extradition between the government of the United States and any foreign government, any justice of the supreme court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any state, may, upon complaint made under oath, charging any person found within the limits of any state, district, or territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

Evidence on the hearing.

SEC. 5271. In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants, or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any such deposition, warrant, or other paper, or copy thereof, is authenticated in the manner required by this section.

Surrender of the fugitive.

SEC. 5272. It shall be lawful for the secretary of state, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape.

Time allowed for extradition.

SEC. 5273. Whenever any person who is committed under this title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any state, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the secretary of state, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

Continuance of provisions limited.

Sec. 5274. The provisions of this title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

Protection of the accused.

Sec. 5275. Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the president shall have power to take all necessary measures for the transportation and safe keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe keeping and protection of the accused.

Powers of agent receiving offenders delivered by a foreign government.

Sec. 5276. Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe keeping.

Penalty for opposing agent, etc.

Sec. 5277. Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

Fugitives from justice of a state or territory.

Sec. 5278. Whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found or on affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Penalty for resisting agent, etc.

Sec. 5279. Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the state or territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars, or imprisoned not more than one year.

Arrest of deserting seamen from foreign vessels.

SEC. 5280. On application of a consul or vice-consul of any foreign government having a treaty with the United States, stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged, at the time of desertion, to the crew of such vessel, it shall be the duty of any court, judge, commissioner of any circuit court, justice, or other magistrate, having competent power, to issue warrants to cause such person to be arrested for examination. If, on examination, the facts stated are found to be true, the person arrested not being a citizen of the United States, shall be delivered up to the consul or vice-consul, to be sent back to the dominions of any such government, or, on the request and at the expense of the consul or vice-consul, shall be detained until the consul or vice-consul finds an opportunity to send him back to the dominions of any such government. No person so arrested shall be detained more than two months after his arrest; but at the end of that time shall be set at liberty, and shall not be again molested for the same cause. If any such deserter shall be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which the case shall be depending or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect.

RECORDS AND DOCUMENTS—AUTHENTICATION—ADMISSIBILITY.

(The section numbers are those of the Revised Statutes of the United States.)

Authentication of legislative acts and proof of judicial proceedings, etc.

SECTION 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

Proofs of records, etc., kept in offices not pertaining to courts.

SEC. 906. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor of keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presidng justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

RULES OF THE SUPREME COURT OF THE TERRITORY.

(Adopted February 8th, 1887.)

RULE 1. The clerk of this court shall reside and keep his office at the capital. He shall not practice as an attorney or counsellor at law in this or any other court of the territory, while he is clerk. He shall not permit any record or paper to be taken from his office without an order of the court or one of the judges for its or his own use. He shall promptly notify by letter one of the attorneys of each side of any decision rendered, when such attorneys are not in attendance upon the court at the time the decision is rendered.

RULE 2. Five days before each term the clerk of the court shall prepare a calendar for the court and one for the bar wherein the cases brought into this court shall be entered in the following order:

First. Cases in which the United States is a party.

Second. Criminal cases arising under the laws of the territory.

Third. All other; each class to be arranged in the order of filing the transcripts.

RULE 3. All motions shall be in writing and subscribed by counsel, and a copy of the same shall be served upon the opposite party or his attorney of record, a reasonable time before the same is heard by the court.

RULE 4. Where the plaintiff in error fails to properly enter his errors in this court, the defendant in error by himself or counsel may apply to the court, on or after the first day of the term, for a rule on plaintiff in error, to be served on him or his counsel of record in the court below, to show cause why the writ or petition in error should not be dismissed and the judgment affirmed. Upon the taking of such rule, the court shall fix a day, during the term, for the return and hearing on the rule; and if no sufficient cause to the contrary be shown, the rule shall be made absolute, and the clerk shall certify the proceedings to the district court, from whence the record came and said certificate, showing the amount of the judgment, including costs, interest, and damages allowed, shall be a sufficient order for the issuance of execution.

RULE 5. No case, except as provided in section thirty-one hundred and twenty-nine of the Revised Statutes of Wyoming, will hereafter be heard until the plaintiff in error shall deliver to the clerk fourteen printed copies of an abstract of so much of the record as is necessary for a full understanding of all the questions presented to this court for decision; of which, six copies shall be for the court, two for the adverse party, two for the territorial library, two for the reporter and two remain with the clerk; said copies to be delivered to the clerk by the plaintiff in error within sixty days from the issuance of the writ, or the filing of the petition in error, and sixty days prior to the hearing of the cause. The reasonable cost of the printing shall be taxed in favor of the prevailing party. If the defendant in error shall deem the abstract of the plaintiff in error imperfect he may, within twenty days after the delivery of said copies to the clerk, deliver to the latter fourteen printed copies of such further or additional abstract as he shall deem necessary to a full understanding of the questions presented to the court for decision, to be distributed like the original fourteen copies; and if the court at the hearing shall deem the additional transcript of the record thus furnished necessary, the court shall tax the costs of the same against the plaintiff in error. The printed transcripts required by this rule shall in all cases be paged, numbered and indexed, the index in every case to refer specifically by page, and number of page, to everything that may be deemed material to a proper understanding of such case. The supreme court, or any member of it, may excuse a convict, or poor person in a civil cause, from observing the requirements of this rule, on proof of his pecuniary inability to comply with the same; the excuse of a member of the court to be by certificate, filed with the clerk.

RULE 6. The transcript shall contain so much of the record, proceedings, evidence, rulings and exceptions in the district court as the plaintiff shall choose to have incorporated in the transcript; subject to the right of the defendant in error to move for diminution of record; and subject to the power of this court to disallow to the plaintiff in error so much of the expense of the transcript sent up at his instance, as arises from surplusage therein, and to disallow to the defendant in error so much of the expense of the additional transcript, sent up at his instance under an allowance of his motion for diminution as arises from surplusage therein.

RULE 7. Nothing which could have been alleged as ground for a new trial in the court below will be considered in this court unless it shall appear that the same was properly presented to the court below by motion for a new trial, and that the motion was overruled and proper exception was at the time reserved to the ruling on such motion, all to be embraced in the bill of exceptions. The ruling of the court below upon each matter presented by the motion for a new trial shall be sufficiently questioned in this court by an assignment that the court below erred in overruling the motion for a new trial.

RULE 8. All briefs shall be printed. The plaintiff in error shall serve upon the defendant in error or his attorney of record within sixty days after the filing of the printed abstract and thirty days before the hearing of the cause in this court a copy of his printed brief, and shall also at the same time, deposit with the clerk of this court fourteen copies thereof to be distributed as the copies of the printed transcripts are required to be distributed. The defendant in error, ten days before the hearing of the cause, shall serve upon the plaintiff in error or his attorney of record, a copy of his brief, and shall likewise at the same time deposit with the clerk of this court fourteen copies thereof, to be distributed as the briefs of plaintiff in error are required to be distributed.

RULE 9. In civil causes the errors relied upon shall be separately and distinctly alleged and presented in the brief of the plaintiff in error. Each error not so alleged and presented shall be deemed to be waived.

RULE 10. Counsel for plaintiff in error shall be entitled to the opening and closing. In his opening he shall present all authorities and points on which he relies; counsel opposed shall then be heard and shall present all his authorities and his defense generally, and counsel for plaintiff in error shall conclude. Counsel on either side of the case shall not occupy in argument exceeding ninety minutes, except by leave of the court, obtained before arguments are commenced.

RULE 11. In all cases decided by this court, a certified copy of the order of affirmance, modification or reversal, shall be sent to the court below within fifteen days after being entered on the journal by the clerk of this court, unless otherwise directed, or proceedings be stayed by appeal or writ of error.

RULE 12. On the first day of each term, a committee of three members of the bar of this court shall be appointed, to whom shall be referred all applications during such term, for admission to practice as attorneys of this court. For the information of the court such committee shall ascertain by careful examination and investigation and report upon the moral character and learning of each applicant, such report to be in writing.

RULE 13. All rules of this court, heretofore adopted, are hereby abrogated.

TABLE OF TITLES, CHAPTERS AND SUB-DIVISIONS

CONTAINED IN THE

REVISED STATUTES OF WYOMING.

TITLE 1. ALIENATION.

Sections.
Chapter 1. Execution, record and construction of conveyances 1–35
Chapter 2. Foreclosure of real estate mortgages 36–51
Chapter 3. Deeds of trust 52–55
Chapter 4. Clouds from title 56–69
Chapter 5. Chattel mortgages 70–91

TITLE 2. ASSIGNMENTS.

Chapter 1. General provisions 92–118

TITLE 3. ATTORNEYS AT LAW.

Chapter 1. General provisions 119–141

TITLE 4. CITIES AND TOWNS.

Chapter 1. Cheyenne charter 142–174
Chapter 2. Cheyenne water supply 175–185
Chapter 3. Cheyenne funding bonds 186–193
Chapter 4. Cheyenne filter bed bonds 194–202
Chapter 5. Laramie charter 203–255
Chapter 6. Laramie water works 256–258
Chapter 7. Laramie sewerage 259–269
Chapter 8. Evanston charter 270–317
Chapter 9. Buffalo charter 318–347
Chapter 10. Sheridan charter 348–410
Chapter 11. Rawlins charter 411–444
Chapter 12. General incorporation of towns 445–497

TITLE 5. COMMON LAW OF ENGLAND.

Chapter 1. Adoption of 498

TITLE 6. CONDEMNATION.

Chapter 1. The taking of private property for certain public uses 499–500

TITLE 7. CORPORATIONS.

Chapter 1. Creation and regulation 501–548
Chapter 2. Power of railroad corporations to issue bonds 549–554
Chapter 3. Aid by counties to railroad corporations 555–565
Chapter 4. Religious, fair, fire and other associations 566–580
Chapter 5. Certain church and eleemosynary associations 581–588

TITLE 7. CORPORATIONS.—*Continued.*

Sections.
Chapter 6. Secret societies 589–599
Chapter 7. Foreign corporations 600–602
Chapter 8. Insurance corporations 603–642
Chapter 9. Confirmation of certain corporate acts 643
Chapter 10. Agriculture and stock associations 644–646
Chapter 11. Dissolution 647–656

TITLE 8. COUNTIES.

Chapter 1. Boundaries and county seats 657–669
Chapter 2. Proceedings when boundary lines are in dispute 670–677
Chapter 3. Apportionment of county indebtedness on the formation of new counties 678–683
Chapter 4. County libraries 684–689
Chapter 5. Construction of artesian wells in the several counties 690–694
Chapter 6. Carbon County court house bonds 695–716
Chapter 7. Fremont County court house bonds 717-736
Chapter 8. Crook County court house bonds 737-757
Chapter 9. Special tax legislation for Sweetwater County 758–762
Chapter 10. Johnson County court house bonds 763–784
Chapter 11. Uinta County jail bonds 785–799
Chapter 12. Uinta County funding bonds 800–814
Chapter 13. Uinta County hospital 815–822

TITLE 9. COURTS.

Chapter 1. Supreme court 823–838
Chapter 2. District courts 839–853

TITLE 10. CRIMES.

Chapter 1. General provisions 854–869
Chapter 2. Offenses against the person 870–896
Chapter 3. Offenses against property 897–922
Chapter 4. Forgery and counterfeiting 923–935
Chapter 5. Offenses against public justice 936–970
Chapter 6. Offenses against public peace. 971–987
Chapter 7. Offenses against public morality, health and police 988–1034
Chapter 8. Offenses by cheats, swindlers and others 1035–1055
Chapter 9. Malicious mischief 1056–1074
Chapter 10. Offenses against public policy 1075–1077
Chapter 11. Rewards for the apprehension of criminals 1078–1082

TITLE 11. ELECTIONS.

Chapter 1. General and special elections—Qualifications of electors 1083–1104
Chapter 2. Manner of conducting elections and canvassing returns 1105–1135
Chapter 3. Manner of contesting elections 1136–1156
Chapter 4. Miscellaneous provisions 1157–1177

TITLE 12. FEES AND SALARIES.

Chapter 1. Fees of territorial secretary 1178–1180
Chapter 2. Compensation and fees of county and precinct officers 1181–1226

TITLE 13. FIREMEN.

Chapter 1. Exemptions of 1227–1232

TITLE 14. FISH.

Sections.
Chapter 1. Propagation and protection of 1233–1248

TITLE 15. FRAUDS AND PERJURIES.

Chapter 1. Statute of 1249–1250

TITLE 16. GAME.

Chapter 1. Protection of 1251–1263

TITLE 17. HABEAS CORPUS.

Chapter 1. General provisions 1264–1309

TITLE 18. INTEREST.

Chapter 1. Legal rates of 1310–1316

TITLE 19. IRRIGATION.

Chapter 1. Rights to use of water and right of way for ditches 1317–1330
Chapter 2. Appropriation of water—Procedure 1331–1361
Chapter 3. Official survey of ditches 1362–1365

TITLE 20. JAILS.

Chapter 1. General provisions 1366–1385

TITLE 21. LANDLORD AND TENANT.

Chapter 1. Tenancy by sufferance 1386–1387

TITLE 22. LANDS.

Chapter 1. Disposal of public town site lands 1388–1399
Chapter 2. Platting and dedicating town sites 1400–1413
Chapter 3. Possessory rights on public lands 1414–1419

TITLE 23. LAWS.

Chapter 1. Publication and distribution of 1420–1429

TITLE 24. LEGAL HOLIDAYS.

Chapter 1. Designation of 1430

TITLE 25. LEGISLATIVE ASSEMBLY.

Chapter 1. Time of meeting and qualifications of members 1431-1432

TITLE 26. LICENSES.

Chapter 1. County licenses 1433–1458
Chapter 2. Gaming licenses 1459–1468

TITLE 27. LIENS.

Chapter 1. Liens on personal property 1469–1485
Chapter 2. Miners' liens 1486–1506
Chapter 3. Mechanics' and builders' liens 1507–1516
Chapter 4. Mechanics' and builders' liens for Laramie County 1517–1540

TITLE 28. MARRIAGE AND DIVORCE.

Chapter 1. Marriage 1541–1557
Chapter 2. Marriage as affecting the personal and property rights of the parties 1558–1566
Chapter 3. Divorce and alimony 1567–1600

TITLE 29. MILITIA.

Sections.
Chapter 1. General provisions - 1601–1616

TITLE 30. MINES AND MINING.

Chapter 1. Lode and placer claims - 1617–1639
Chapter 2. Coal mines - 1640–1660

TITLE 31. NOTARIES PUBLIC AND COMMISSIONERS.

Chapter 1. Notaries public - 1661–1673
Chapter 2. Commissioners - 1674–1678

TITLE 32. OFFICERS—TERRITORIAL.

Chapter 1. Attorney general - 1679–1685
Chapter 2. Treasurer and auditor - 1686–1735
Chapter 3. Librarian - 1736–1754
Chapter 4. Stenographer - 1755–1768
Chapter 5. Insurance commissioner - 1769–1771
Chapter 6. Geologist and mining engineer - 1772–1776
Chapter 7. Penitentiary commissioners - 1777–1790

TITLE 33. OFFICERS—COUNTY.

Chapter 1. County commissioners - 1791–1819
Chapter 2. Judge of probate and treasurer - 1820–1839
Chapter 3. Clerk and register of deeds - 1840–1857
Chapter 4. Sheriff - 1858–1871
Chapter 5. Assessor - 1872–1875
Chapter 6. Coroner - 1876–1888
Chapter 7. Surveyor - 1889–1892
Chapter 8. County and prosecuting attorney - 1893–1897
Chapter 9. Superintendent of schools - 1898
Chapter 10. Justices of the peace and constables - 1899–1900
Chapter 11. Miscellaneous provisions - 1901–1924

TITLE 34. PHYSICIANS, SURGEONS AND PHARMACISTS.

Chapter 1. Physicians and surgeons - 1925–1931
Chapter 2. Pharmacists - 1932–1941

TITLE 35. POLICE REGULATIONS.

Chapter 1. Restrictions upon the sale of railroad tickets - 1942–1946
Chapter 2. Railroads to plow fire guards - 1947–1949
Chapter 3. Storage of explosives - 1950–1952

TITLE 36. POOR AND PAUPERS.

Chapter 1. Maintenance of, by counties - 1953–1965
Chapter 2. Burial of indigent veterans - 1966–1968

TITLE 37. PROBATE COURTS.

Chapter 1. Terms and general powers - 1969—1982
Chapter 2. Executors and administrators -
  Sub-division 1. Appointment and removal - 1983–2036
  Sub-division 2. Duties respecting money and property - 2037–2093
  Sub-division 3. Duties respecting sale of real estate - 2094–2131
  Sub-division 4. Allowance of demands against estates - 2132–2159
  Sub-division 5. Accounting and final settlement - 2160–2177
  Sub-division 6. Distribution of estates - 2178–2203
  Sub-division 7. Proceedings against executors and administrators 2204–2212
  Sub-division 8. Appeals - 2213–2220

TITLE 37. PROBATE COURTS.—*Continued.*

Sections.
Chapter 3. Descent and distribution of property - - 2221–2233
Chapter 4. Wills and the probate thereof - - - - 2234–2249
Chapter 5. Guardian and ward - - - - - - - 2250–2273
Chapter 6. Adoption - - - - - - 2274–2286
Chapter 7. Lunatics and drunkards - - - - - 2287–2331
Chapter 8. Juvenile delinquents - - - - - 2332–2336

TITLE 38. PROCEDURE—CIVIL.

DIVISION 1. GENERAL AND PRELIMINARY PROVISIONS.

Chapter 1. Provisions, preliminary and miscellaneous - - 2337–2346
Chapter 2. Specific duties of certain officers - - 2347–2359

DIVISION 2. COMMENCEMENT OF ACTIONS—JURISDICTION—ISSUE.

Chapter 1. Form of action - - - - - - - 2360–2362
Chapter 2. Time of commencing actions
  Sub-division 1. Actions in general—abatement - - - 2363–2365
  Sub-division 2. Actions concerning real property - - 2366–2367
  Sub-division 3. Other actions - - - - - - 2368–2375
  Sub-division 4. General provisions - - - - - 2376–2381
Chapter 3. Parties to actions - - - - - - 2382–2407
Chapter 4. Joinder of actions - - - - - - 2408–2410
Chapter 5. Where actions to be brought - - - 2411–2421
Chapter 6. Jurisdiction by summons, publication or appearance
  Sub-division 1. Actual service - - - - - 2422–2434
  Sub-division 2. Constructive service - - - - - 2435–2443
Chapter 7. Pleadings
  Sub-division 1. Pleadings in general - - - - 2444–2446
  Sub-division 2. Petition - - - - - - - - 2447–2448
  Sub-division 3. Demurrer - - - - - - - 2449–2456
  Sub-division 4. Answer and cross petition - - - 2457–2465
  Sub-division 5. Reply - - - - - - - 2466
  Sub-division 6. General rules - - - - - - - 2467–2497
  Sub-division 7. Mistakes and amendments - - - 2498–2507
  Sub-division 8. Motions - - - - - - - - 2508–2513

DIVISION 3. TRIAL.

Chapter 1. Preliminary provisions
  Sub-division 1. The issue, how tried - - - - 2514–2518
  Sub-division 2. Time of trial - - - - - - - 2519–2523
  Sub-division 3. Tender, and offer to confess judgment - 2524–2530
  Sub-division 4. Revivor of actions - - - - - 2531–2547
Chapter 2. Conduct of the trial
  Sub-division 1. Trial by jury and verdict - - - - 2548–2566
  Sub-division 2. Trial by the court. - - - - - 2567–2572
  Sub-division 3. Trial by referee - - - - - 2573–2581
  Sub-division 4. Trial by master commissioners - - 2582–2587
Chapter 3. Evidence
  Sub-division 1. Competency of witnesses and evidence - - 2588–2593
  Sub-division 2. Means of securing attendance - - 2594–2608
  Sub-division 3. Modes of taking testimony - - - 2609–2635
  Sub-division 4. Admission and inspection of documents - 2636–2641
  Sub-division 5. Variance - - - - - - - - 2642–2644
Chapter 4. Exceptions - - - - - - - 2645–2651
Chapter 5. New trial - - - - - - - 2652–2656

DIVISION 4. JUDGMENT.

Chapter 1. Judgment in general - - - - - 2657-2666
Chapter 2. Judgment upon failure to answer, and by confession 2667–2672
Chapter 3. Manner of giving and entering judgment - 2673–2686

DIVISION 4. JUDGMENT.—*Continued.*

Sections.

Chapter 4. Judgment for costs and its enforcement 2687–2700
Chapter 5. New trial, and other relief after judgment 2701–2712
Chapter 6. Revivor of, and new parties to judgment 2713–2718

DIVISION 5. ENFORCEMENT OF JUDGMENT.

Chapter 1. Execution
- Sub-division 1. Kinds of execution 2719–2720
- Sub-division 2. Execution against property 2721–2771
- Sub-division 3. Manner of subjecting corporate stock to execution and attachment 2772–2779
- Sub-division 4. Exemptions from execution 2780–2791
- Sub-division 5. Procedure when chattels claimed by third person 2792–2794
- Sub-division 6. Execution against the person 2795–2804
- Sub-division 7. Privilege from arrest—Prison bounds 2805–2811

Chapter 2. Proceedings in aid of execution
- Sub-division 1. By civil action 2812
- Sub-division 2. By garnishment against railroad companies 2813–2819
- Sub-division 3. By examination of debtor 2820–2837
- Sub-division 4. By attachment 2838

DIVISION 6. PROVISIONAL REMEDIES.

Chapter 1. Arrest and bail 2839–2868
Chapter 2. Attachment
- Sub-division 1. Grounds of attachment 2869
- Sub-division 2. How attachment obtained 2870–2874
- Sub-division 3. Execution and return thereof 2875–2886
- Sub-division 4. Disposition of attached property 2887–2892
- Sub-division 5. Proceedings upon attachment 2893–2907
- Sub-division 6. General provisions 2908–2911

Chapter 3. Attachment before debt due 2912–2918
Chapter 4. Injunctions 2919–2934
Chapter 5. Receivership and other provisional remedies 2935–2941

DIVISION 7. SPECIAL PROCEEDINGS.

Chapter 1. Amercement 2942–2948
Chapter 2. Arbitration 2949–2961
Chapter 3. Partition 2962–2984
Chapter 4. Real actions.
- Sub-division 1. To quiet title and recover possession 2985–2991
- Sub-division 2. Occupying claimants 2992–3002
- Sub-division 3. To complete real contracts 3003–3008
- Sub-division 4. To sell entailed and other estates 3009–3019

Chapter 5. Replevin 3020–3037
Chapter 6. Sureties, rights and remedies of 3038–3052
Chapter 7. Taxes and assessments, relief against illegal 3053–3056
Chapter 8. To contest wills 3057–3065
Chapter 9. Proceedings to perpetuate testimony 3066–3072
Chapter 10. Mandamus 3073–3091
Chapter 11. Quo warranto 3092–3125
Chapter 12. Jurisdiction and procedure in error 3126–3151

DIVISION 8. PROVISIONS AS TO THE OPERATION OF THIS TITLE.

Chapter 1. General provisions 3152–3155

TITLE. 39. PROCEDURE—CRIMINAL.

Chapter 1. Proceedings to prevent crime 3156–3167
Chapter 2. Search warrants 3168–3177
Chapter 3. Arrest 3178–3186
Chapter 4. Examinations 3187–3198

TITLE 39. PROCEDURE—CRIMINAL.—*Continued.*

		Sections.
Chapter 5.	Bail	3199–3220
Chapter 6.	Grand jury proceedings	3221–3241
Chapter 7.	Indictments and process thereon	3242–3257
Chapter 8.	Pleas to indictment—Arraignment—Change of venue	3258–3278
Chapter 9.	Juries and challenges	3279–3287
Chapter 10.	Evidence	3288–3299
Chapter 11.	Trial and exceptions	3300–3313
Chapter 12.	Verdict, judgment and proceedings thereon	3314–3346
Chapter 13.	New trials	3347–3349
Chapter 14.	Motions in arrest	3350–3353
Chapter 15.	Proceedings in error.	3354–3360
Chapter 16.	Fugitives from justice	3361–3363
Chapter 17.	Reprieves and pardons	3364–3370
Chapter 18.	Provisions relating to convict labor	3371–3375

TITLE 40. PROCEDURE—MISCELLANEOUS.

Chapter 1.	Juries	3376–3396
Chapter 2.	Continuances	3397–3399
Chapter 3.	Change of venue	3400–3409
Chapter 4.	Interpreters	3410–3411
Chapter 5.	Oaths	3412–3413
Chapter 6.	Time, legal standard of	3414

TITLE 41. PROCEDURE IN THE COURTS OF JUSTICES OF THE PEACE.

Chapter 1.	Jurisdiction in civil cases	3415–3420
Chapter 2.	Procedure in civil cases	
Sub-division 1.	Actions, how commenced	3421–3430
Sub-division 2.	Appearance and pleadings	3431–3440
Sub-division 3.	Change of place of trial	3441–3448
Sub-division 4.	Means of securing witnesses	3449–3456
Sub-division 5.	Depositions and commissions	3457–3460
Sub-division 6.	Trial	3461–3473
Sub-division 7.	Entering and setting aside judgments	3474–3479
Sub-division 8.	Setting off one judgment against another	3480–3482
Sub-division 9.	Judgment by confession	3483–3485
Sub-division 10.	Appeals	3486–3503
Sub-division 11.	Executions	3504–3512
Sub-division 12.	Stay of execution	3513–3518
Sub-division 13.	Sale on execution	3519–3521
Sub-division 14.	Replevin	3522–3537
Sub-division 15.	Trial of the right of property	3538–3540
Sub-division 16.	Attachment and garnishment	3541–3573
Sub-division 17.	Forcible entry and detainer	3574–3589
Sub-division 18.	Contempt	3590–3598
Sub-division 19.	Arbitration	3599–3602
Sub-division 20.	General provisions	3603–3619
Chapter 3.	Jurisdiction and procedure in criminal cases	3620–3664

TITLE 42. PUBLIC BUILDINGS AND INSTITUTIONS.

Chapter 1.	Capitol building and university	3665–3718
Chapter 2.	University lands	3719–3724
Chapter 3.	Blind, deaf and dumb institute	3725–3738
Chapter 4.	Insane asylum	3739–3767

TITLE 43. REVENUE, TERRITORIAL AND COUNTY.

Chapter 1.	Mode of raising revenue	3768–3838
Chapter 2.	Assessment of railways and telegraph lines when in more than one county	3839–3842

TITLE 43. REVENUE, TERRITORIAL AND COUNTY.—*Continued.*

Sections.

Chapter 3. Special provisions relating to the taxation of personal property - - - - - - - - 3843–3850
Chapter 4. Uniform valuation of live stock - - 3851–3853
Chapter 5. Transfer of certain delinquent taxes in Sweetwater County to Fremont County - - - 3854–3858

TITLE 44. ROADS AND HIGHWAYS.

Chapter 1. Roads and bridges - - - - - - 3859–3899
Chapter 2. Obstructing water courses - - - 3900–3904

TITLE 45. SCHOOL LAWS.

Chapter 1. Superintendent of public instruction—Teachers' institute - - - - - - - 3905–3913
Chapter 2. Duties of county superintendent - - 3914–3917
Chapter 3. School districts—Organization and powers - - 3918–3950
Chapter 4. District officers and their duties - - 3951–3963
Chapter 5. School tax and the collection thereof - - - 3964–3968
Chapter 6. Miscellaneous provisions - - - 3969–3982

TITLE 46. SCHOOL DISTRICT BONDS.

Chapter 1. Albany County, District No. 1, (bonds of 1882) - 3983–3994
Chapter 2. Albany County, District No. 1, (bonds of 1886) 3995–4006
Chapter 3. Carbon County, District No. 3, (bonds of 1886) - 4007–4019
Chapter 4. Johnson County, District No. 1, (bonds of 1884) 4020–4033
Chapter 5. Uinta County, District No. 1, (bonds of 1884) - 4034–4046
Chapter 6. Uinta County, District No. 1, (bonds of 1886) 4047–4055
Chapter 7. Uinta County, District No. 6, (bonds of 1884) - 4056–4066

TITLE 47.

Seal of the territory - - - - - 4067

TITLE 48.

Seat of government - - - - - 4068

TITLE 49. SPECIAL PARTNERSHIPS.

Chapter 1. Formation and regulation of - - - - 4069–4093

TITLE 50. STOCK LAWS.

Chapter 1. Brands - - - - - - - - 4094–4106
Chapter 2. Mavericks and round-ups - - - - 4107–4118
Chapter 3. Restrictions upon stock men, and offenses against stock laws - - - - - - 4119–4143
Chapter 4. Sheep - - - - - - - - 4144–4159
Chapter 5. Swine and goats - - - - - - 4160–4166
Chapter 6. Wind river valley stock growers' association - 4167–4169
Chapter 7. Estrays - - - - - - - 4170–4181
Chapter 8. Fences - - - - - - - - 4182–4194
Chapter 9. Indemnity for stock killed by railways - 4195–4198
Chapter 10. Veterinarian—Condemnation of diseased stock - 4199–4213

TITLE 51. WEIGHTS AND MEASURES.

Chapter 1. Regulation of - - - - - 4214–4233

TITLE 52. WILD ANIMALS.

Sections.
Chapter 1. Bounty for destruction of - - - 4234–4236

TITLE 53. APPROPRIATIONS.

Chapter 1. For the fiscal years 1886 and 1887 - - 4237–4268

TITLE 54. REVISED STATUTES.

Chapter 1. Preparation and publication, force and effect - 4269–4286

REVISED STATUTES OF WYOMING.

In Force January 1st, 1887.

TITLE 1. ALIENATION.

Chapter 1. Execution, record and construction of conveyances.
Chapter 2. Foreclosure of real estate mortgages.
Chapter 3. Deeds of trust.
Chapter 4. Clouds from title.
Chapter 5. Chattel mortgages.

CHAPTER 1.

EXECUTION, RECORD AND CONSTRUCTION OF CONVEYANCES.

SECTION.
1. Conveyances, how and by whom made.
2. Married women may convey.
3. Quit-claim deed, effect of.
4. Tenant for life, conveyance by, etc.
5. No covenants by implication.
6. No implied covenants to pay mortgage debt.
7. Adverse possession not to invalidate conveyance.
8. Execution and acknowledgment within the territory.
9. Clerks of courts may take acknowledgments.
10. Appointment, etc., of U. S. commissioner.—Notice to county clerk.
11. Execution and acknowledgment out of the territory.
12. Execution, etc., out of territory according to territorial law.
13. Conveyance by non-resident married women.
14. Execution and acknowledgment in foreign countries.
15. When conveyance may be recorded.
16. Duty of register in receiving and recording conveyances.
17. Recorded conveyance is constructive notice.
18. Unrecorded conveyance void as to subsequent purchasers.
19. Conveyance of church pews may be recorded.

SECTION.
20. When conveyance or the record thereof, admissable as evidence.
21. Absolute conveyance not affected by unrecorded deed of defeasance.
22. Recorded assignment not notice to mortgagor.
23. "Purchaser" defined.
24. "Conveyance" defined.
25. Power of attorney is not conveyance.—Record power of attorney and executory contract.
26. Revocation of power of attorney to be recorded.
27. Scroll may be used as seal.
28. Conveyances heretofore properly executed to be recorded.
29. Conveyance not properly executed not to be recorded.
30. Assignment or discharge of mortgage on margin of record.
31. Discharge by certificate of release.
32. Mortgagee failing to discharge liable in damages.
33. Construction of words in this chapter.
34. Word "heirs" not necessary to convey fee simple.
35. Word "release" not necessary in quit-claim deeds.

Conveyances, how and by whom made.

Section 1. Conveyances of land or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever. [S. L. 1882, ch. 1, § 1.]

Married women may convey.

Sec. 2. A married woman may, by her deed or mortgage, convey her real estate in like manner as she might if she were an unmarried woman. [S. L. 1882, ch. 1, § 2.]

For execution of conveyance by non-resident married women, see section 13.

Quit claim deed, effect of.

Sec. 3. A deed of quit claim and release shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. [S. L. 1882, ch. 1, § 3.]

Conveyance by tenant for life, etc.

SEC. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. [S. L. 1882, ch. 1, § 4.]

No covenants by implication.

SEC. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. [S. L. 1882, ch. 1, § 5.]

No implied covenant to pay mortgage debt.

SEC. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured, where there shall be no express covenant for such payment contained in the mortgage, and, if no bond or other separate instrument to secure such payment shall be given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage. [S. L. 1882, ch. 1, § 6.]

Adverse possession not to invalidate conveyance.

SEC. 7. No grant or conveyance of lands or interest therein shall be void, for the reason that at time of the execution thereof, such land shall be in the actual possession of another, claiming adversely. [S. L. 1882, ch. 1, § 7.]

Execution and acknowledgment within the territory.

SEC. 8. Deeds, mortgages or conveyances of lands, or any interest in lands, executed within this territory, shall be executed in the presence of one witness, who shall subscribe the same as such, and the person executing such deed, mortgage or conveyance, shall acknowledge the execution thereof, before any judge or clerk of a court of record, or before any court commissioner appointed under or by authority of the laws of the United States, or any county clerk, justice of the peace, or notary public, within the territory, and the officer taking such acknowledgment shall endorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand and seal of office, if there be one. [S. L. 1884, ch. 29, § 1.]

Clerks of courts may take acknowledgments.

SEC. 9. All conveyances of real estate and other instruments required by the laws of this territory to be acknowledged, may be acknowledged before the clerk of any court of record within the territory or without the territory. [S. L. 1879, ch. 22, § 1.]

Appointment, etc., of U. S. commissioner—Notice to county clerk.

SEC. 10. When any court or the judge thereof, shall appoint a court commissioner who shall be authorized to take acknowledgments and administer oaths, or whenever any court or the judge thereof shall revoke the appointment of any such court commissioner, or when any such commissioner shall resign, or his appointment cease for any reason, it shall be the duty of the clerk of said court to immediately notify, in writing, the county clerk and *ex-officio* register of deeds of each county embraced within the jurisdiction of said court, of the making of said appointment or the termination thereof, as the case may be. [S. L. 1884, ch. 29, § 3.]

Execution and acknowledgment out of the territory.

SEC. 11. If any such deed, mortgage or conveyance shall be executed in any other state, territory or district of the United States, or in any foreign country, such deed, mortgage or conveyance may be executed according to the laws of such state, territory, district or country, and may be acknowledged before any officer authorized by the laws of such state, territory, district or country, to take the acknowledgment of deeds, mortgages or conveyances therein, or before any commissioner appointed by the governor of this terrritory for such purposes; *Provided*, That if such deed, mortgage or conveyance is not acknowledged before a clerk of a court of record, county clerk, or a commissioner appointed as aforesaid, it must have attached thereto a certificate of the clerk of a court of record or other proper certifying officer, or a county clerk, of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof such officer as he is therein represented to be, that he verily believes the signature of such person subscribed thereto to be genuine, and that the deed, mortgage or conveyance is executed and acknowledged according to the laws of such state, territory, district or country; if any such deed, mortgage or conveyance, executed as aforesaid, be acknowledged before a clerk of a court of record, county clerk or commissioner appointed as aforesaid, then the officer taking the acknowledgment shall certify that such deed, mortgage or conveyance is executed and acknowledged according to the laws of such state, territory, district or country. [S. L. 1882, ch. 1, §9; S. L. 1886, ch. 82, § 1.]

Execution, etc., out of territory according to territorial law.

Sec. 12. Any deed, mortgage or conveyance executed in any other state, territory, district or country, which shall be executed according to the laws of this territory, and acknowledged before a clerk of a court of record, county clerk, or a commissioner appointed as aforesaid, shall have the same effect as if executed and acknowledged within this territory. [S. L. 1882, ch. 1, § 10.]

Conveyance by non-resident married woman.

Sec. 13. When any married woman not residing in this territory, shall join with her husband in any conveyance of real estate situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole. [S. L. 1882, ch. 1, § 12.]

Execution and acknowledgment in foreign countries.

Sec. 14. If any deeds, mortgages or conveyances of lands, or of any interest in lands, be executed in any foreign country, government, kingdom or empire, such deed, mortgage, or conveyance of land may be executed according to the laws of this territory, and may be acknowledged before a consul-general, consul or vice-consul of the United States; and when so acknowledged the officer taking the acknowledgment shall certify the same over his hand and official seal or the seal of the consulate to which he is attached, if there be any such seal; and in case he has no official seal, and there be no seal of his consulate, that fact shall be stated in the certificate; and no other or further authentication shall be required to entitle such instrument to record in this territory. This section shall also apply to powers of attorney executed in any such foreign country, government, kingdom or empire. [S. L. 1886, ch. 110, § 1.]

Where conveyance may be recorded.

Sec. 15. A certificate of the acknowledgment of any deed, mortgage, or conveyance, or proof of the execution thereof, before a court of record or a justice of the peace, signed by the clerk of such court, (or by the justice) before whom the same was taken, as provided in this chapter, and in the cases where the same is necessary the certificate required by section eleven shall entitle such deed, mortgage or conveyance, certificate or certificates aforesaid, to be recorded in the office of the register of deeds in the county where the land lies. [S. L. 1882, ch. 1, § 12.]

Duty of register in receiving and recording conveyances.

Sec. 16. It shall be the duty of the register of deeds of each county within this territory, to receive and record at length all such deeds, mortgages, conveyances or instruments as shall be left with him for that purpose, and he shall endorse on every such instrument the day and hour on which the same was filed for record. [S. L. 1882, ch. 1, § 13.]

Recorded conveyance is constructive notice.

SEC. 17. Each and every such deed, mortgage or conveyance touching any interest in lands, made and recorded according to the provisions of this chapter shall be notice to, and take precedence of, any subsequent purchaser or purchasers, from the time of delivering said instrument at the office of the register of deeds for record. [S. L. 1882, ch. 1, § 14.]

Unrecorded conveyance void as to subsequent purchasers.

SEC. 18. Every conveyance of real estate within this territory, hereafter made, which shall not be recorded as provided by law, shall be void, as against any subsequent purchaser or purchasers in good faith and for a valuable consideration of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. [S. L. 1882, ch. 1, § 15.]

Conveyance of church pews may be recorded.

SEC. 19. Deeds or mortgages of pews or slips in any church, may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society, or proprietors, if incorporated or legally organized, and such clerk shall receive the same fees as the register of deeds is entitled to for similar services. [S. L. 1882, ch. 1, § 16.]

When conveyance, or the record thereof, admissible as evidence.

SEC. 20. All deeds, mortgages, conveyances or instruments of any character, concerning any interest in lands within this territory, which shall be executed, acknowledged, attested or proved in accordance with the provisions of this chapter, or the laws of this territory, or the local laws of any mining district wherein such real estate is situate, in force at the date of such acknowledgment, attestation or proof, may be read in evidence, without in the first instance additional proof of the execution thereof, and the record of any such deed, mortgage, conveyance or instrument, whether an original record of any mining district, or a copy thereof deposited in the register's office of any county, in accordance with the laws of this territory (as a part of the records of such mining district) or a record of such recorder's office, when the same appears by such record to be properly acknowledged, attested or proved in accordance with the laws of this territory, or of the proper mining district in force at the date of such acknowledgment, attestation or proof, or a transcript from any such record, certified by the register of the proper county where such deed, mortgage, conveyance or instrument ought by law to be recorded, may, upon the affidavit of the party desiring to use the same, that the original thereof is not in his possession or power to produce, be read in evidence with like effect as the original of such deed, mortgage, conveyance or instrument properly acknowledged, attested or proved as aforesaid, but the effect of such evidence may be rebutted by other competent testimony. [S. L. 1882, ch. 1, § 17.]

Absolute conveyance not affected by unrecorded deed of defeasance.

SEC. 21. When a deed or mortgage purports to be an absolute conveyance in terms, but is made or intended to be made defeasable by force of a defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the register of deeds of the county where the lands lie. [S. L. 1882, ch. 1, § 18.]

Recorded assignment not notice to mortgagor.

SEC. 22. The recording of the assignment of a mortgage, shall not in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them or either of them to the mortgagee. [S. L. 1882, ch. 1, § 19.]

"Purchaser" defined.

SEC. 23. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration, and also every assignee of a mortgage or lease, or other conditional estate. [S. L. 1882, ch. 1, § 20.]

"Conveyance" defined.

SEC. 24. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, alienated, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, executory contracts for the sale or purchase of lands, and certificates which show that the purchaser has paid the consideration and is entitled to a deed for the lands, and contain a promise or agreement to furnish said deed at some future time. [S. L. 1882, ch. 1, § 21.]

Power of attorney is not conveyance—Record of power of attorney and executory contract.

SEC. 25. The preceding section shall not be construed to extend to a letter of attorney, or other instrument, containing a power to convey lands as agent or attorney for the owner of such lands, but every such letter or instrument and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded by the register of deeds of any county in which the lands to which such persons or contract relates may be situated, and when so acknowledged or proved and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence in the same manner and with like effect as a conveyance recorded in such county. [S. L. 1882, ch. 1, § 22.]

Revocation of power of attorney to be recorded.

SEC. 26. No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded. [S. L. 1882, ch. 1, § 23.]

Scroll may be used as seal.

SEC. 27. A scroll or device used as a seal upon any deed of conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto or impressed thereon; but this section shall not be construed to apply to such official seals as are or may be provided by law. [S. L. 1882, ch. 1, § 24.]

Conveyance heretofore properly executed to be recorded.

SEC. 28. All conveyances of real estate heretofore made and acknowledged or proved in accordance with the laws of this territory in force at the time of such making, acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner and with like effect as conveyances executed and acknowledged in accordance with the provisions of this chapter. [S. L. 1882, ch. 1, § 25.]

Conveyance not properly executed to be recorded.

SEC. 29. Any register of deeds who shall receive for record, and record any deed, mortgage, or other instrument affecting the title to real estate, which is not executed, acknowledged, attested or proved in accordance with the provisions of this chapter, shall be liable to a penalty of one hundred dollars, payable to the party aggrieved, in an action of damages for the same. [S. L. 1882, ch. 1, § 26.]

Assignment or discharge of mortgage on margin of record.

SEC. 30. Any mortgage or deed of trust that has been, or hereafter may be recorded, may be assigned or discharged by an entry in the margin of the record thereof, signed by the mortgagee or beneficiary, his assignee, or his legally authorized agent or representative assigning his interest in, or acknowledging the satisfaction of, the mortgage or deed of trust, in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of assignment or release, duly executed, acknowledged and recorded. [S. L. 1882, ch. 1, § 27.]

Discharge by certificate of release.

SEC. 31. Any mortgage or deed of trust shall be discharged upon the record thereof, by the register of deeds in whose custody it shall be, when there shall be recorded in his office a certificate or deed of release executed by the mortgagee or beneficiary, his assignee, or his legally authorized representative, acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage or deed of trust has been paid or otherwise satisfied or discharged, and the register of deeds shall make a reference to such release, upon the margin of the record of the mortgage or deed of trust. [S. L. 1882, ch. 1, §28.]

Mortgagee failing to discharge liable in damages.

SEC. 32. If any mortgagee, his personal representative or assignee, as the case may be, after a full performance of the condition of the mortgage, whether before or after the breach thereof, shall for the space of seven days after being thereto requested, and after the tender of his reasonable charges, fail, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate or deed of discharge or release thereof, he shall be liable to the mortagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such failure, refusal or neglect, to be recovered in a civil action. [S. L. 1882, ch. 1, §29.]

Construction of words in this chapter.

SEC. 33. All words in this chapter importing the singular number may be construed as meaning the plural, and those importing the plural may be construed as meaning the singular, and all words importing the masculine gender may be construed as meaning females. [S. L. 1882, ch. 1, §30.]

Word "heirs" not necessary to convey fee simple.

SEC. 34. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of real estate shall pass all the estate of the grantor therein, unless the intent to pass a less estate shall expressly appear or be necessarily implied in the terms of the grant. [S. L. 1884, ch. 5, § 1.]

Word "release" not necessary in quit-claim deeds.

SEC. 35. A deed of quit-claim, without the use of the word "release," shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. And all deeds of quit-claim, heretofore given to real estate in this territory, shall have the same effect as deeds of quit-claim and release, and shall operate the same as if the word "release" had been used therein. [S. L. 1884, ch. 5, § 2.]

CHAPTER 2.

FORECLOSURE OF REAL ESTATE MORTGAGES.

SECTION.
36. Certain mortgages may be foreclosed by advertisement.
37. Prerequisites to foreclosure.
38. Notice of foreclosure.
39. What notice shall specify.
40. Sale, how conducted.
41. Postponement of sale.
42. Distinct tracts to be sold separately.
43. Mortgagee may purchase at sale.
44. Foreclosure deed and its requisites.
SECTION.
45. Costs and expenses of sale.
46. To whom surplus payable.
47. Evidence of sale may be perpetuated by affidavit.
48. Affidavit, how taken.
49. Affidavits to be recorded.
50. Clerk to make reference to affidavit on margin of record.
51. Application of this chapter.

Certain mortgages may be foreclosed by advertisement.

SEC. 36. Every mortgage of real estate, containing therein a power of sale upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified. [S. L. 1882, ch. 72, § 1.]

Prerequisites to foreclosure.

SEC. 37. To entitle any party to give a notice as hereinafter prescribed and to make such foreclosure, it shall be requisite:

1. That some default in a condition of such mortgage shall have occurred by which the power to sell became operative;

2. That no suit or proceeding shall have been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof, or if any suit or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied in whole or in part; and,

3. That the mortgage containing said power of sale has been duly recorded; and if it shall have been assigned, that all the assignments thereof shall have been recorded. [S. L. 1882, ch. 72, § 2.]

Notice of foreclosure.

SEC. 38. Notice that said mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for six successive weeks, at least once in each week, in a newspaper printed in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated, if there be one; and if no newspaper be printed in such county, then such notice shall be published in a paper printed in the territory and of general circulation in said county. [S. L. 1882, ch. 72, § 3.]

What notice shall specify.

SEC. 39. Every such notice shall specify:

1. The names of the mortgagor and of the mortgagee and the assignee of the mortgage, if any;

2. The date of the mortgage and when recorded;

3. The amount claimed to be due thereon at the date of the notice;

4. A description of the mortgaged premises, conforming substantially with that contained in the mortgage; and,

5. The time and place of sale. [S. L. 1882, ch. 72, § 4.]

Sale, how conducted.

SEC. 40. The sale shall be at public vendue, between the hour of nine o'clock in the forenoon, and five o'clock in the afternoon, at the front door of the court house, or the place of holding the district court of the county within the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person appointed for that purpose in the mortgage or by the sheriff or deputy sheriff of the county, to the highest bidder. [S. L. 1882, ch. 72, § 5.]

Postponement of sale.

SEC. 41. Such sale may be postponed from time to time by inserting a notice of such postponement as soon as practicable in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale shall be postponed, at the expense of the party requesting such postponement. [S. L. 1882, ch. 72, § 6.]

Distinct tracts to be sold separately.

SEC. 42. If the mortgaged premises consist of distinct tracts or lots, they shall be sold separately, and no more tracts, or lots, shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest and costs and expenses allowed by law. [S. L. 1882, ch. 72, § 7.]

Mortgagee may purchase at sale.

SEC. 43. The morgagee, his assigns, or his or their legal representatives may fairly and in good faith, purchase the premises sold upon foreclosure of any mortgage by advertisement under power of sale or any part thereof, at such sale; and whenever the mortgage shall provide for the mortgagee to sell the premises at the forclosure sale, notwithstanding such provision, the sale may be made by the sheriff, or deputy sheriff, or by the mortgagee at the option of the latter. [S. L. 1882, ch. 72, § 8.]

Foreclosure deed and its requisites.

SEC. 44. The officer or person making the sale shall forthwith execute and deliver to each purchaser a deed of the premises bid off by him, specifying therein as the consideration of such deed, the precise amount for which such parcel was sold and the said deed shall recite the date of the mortgage; the time and place when it was recorded; the names of the mortgagor and mortgagee, and assignee if any; the amount due for which said mortgage was foreclosed; that notice was given as required by law, stating the newspaper in which said notice was published, and the time and place of sale. [S. L. 1882, ch. 72, § 9.]

Cost and expenses of sale.

SEC. 45. The cost and expenses of the foreclosure sale, which shall be paid out of the proceeds of the sale, shall include the costs of advertising, the fee of the officer or person making the sale and executing the deed, said fee not to exceed the fees of sheriffs for collecting money on executions; and an attorney or solicitor's fee if there be a stipulation therefor in the mortgage. [S. L. 1882, ch. 72, § 10.]

To whom surplus payable.

SEC. 46. If after any sale of real estate made as herein prescribed, there shall remain in the hands of the officer or other person making the sale any surplus money after satisfying the mortgage on which such real estate was sold and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer or other person on demand to the mortgagor, his legal representatives or assigns. [S. L. 1882, ch. 72, § 11.]

Evidence of sale may be perpetuated by affidavit.

SEC. 47. Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, or in accordance with the provisions of any mortgage may procure;

First—An affidavit of the publication of the notice of sale and of any notice of postponement to be made by the proprietor or manager of the newspaper in which the same was inserted, or by some person in his employ knowing the facts;

Second—An affidavit of the fact of any sale pursuant to such notice to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid and the name of the purchaser. [S. L. 1882, ch. 72, § 12.]

Affidavit, how taken.

SEC. 48. The affidavits specified in the last preceding section may be taken and certified by any officer authorized by law to administer oaths. [S. L. 1882, ch. 72, § 13.]

Affidavits to be recorded.

SEC. 49. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of mortgages, and such original affidavits; the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained. [S. L. 1882, ch. 72, § 14.]

Clerk to make reference to affidavit on margin of record.

SEC. 50. A note referring to the page and book where the evidence of any sale having been made under a mortgage, is recorded, shall be made by the register recording such evidence in the margin of the record of such mortgage, if such record be in his office. [S. L. 1882, ch. 72, § 15.]

Application of this chapter.

SEC. 51. The provisions of this chapter shall apply to all mortgages containing a power of sale executed prior to the passage thereof, not having been foreclosed, and nothing in this chapter contained shall be construed as limiting the power of parties to a mortgage to provide therein as they may see fit as to the manner of foreclosure and sale, and when such provision is made, foreclosure and sale may be made in accordance therewith, or in accordance with the provisions of this chapter. [S. L. 1882, ch. 72, § 16.]

CHAPTER 3.

DEEDS OF TRUST.

SECTION.
52. Form of deeds of trust.
53. Trustee to make sale at public auction—Notice of sale.
SECTION.
54. Manner of publishing notice.
55. Form of deed on sale under trust deed.

Form of deeds of trust.

SEC. 52. A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect:

This deed, made the —— day of ——, in the year of ——, between —— (the grantor) of the one part, and ——— (the trustee) of the other part; witnesseth: that the said ——— (the grantor) doth (or do) grant unto the said ——— (the trustee) the following property (here describe it), in trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon); witness the following signatures and seals (or signature and seal). [S. L. 1877, p. 94, § 1.]

Trustee to make sale at public auction—Notice of sale.

SEC. 53. The trustee in any such deed, except so far as may be therein otherwise provided, shall, whenever required by any creditor secured or any surety indemnified by the deed, or the personal representative of any such creditor or surety, after the debt due to such creditor, or for which such surety may be liable, shall have become payable, and default shall have been made in the payment thereof, or any part thereof, by the grantor, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction, for cash, having first given notice of such sale as hereinafter prescribed, and shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five per centum on first three hundred dollars and two per centum on the residue of the proceeds, and then, pro rata (or in the order of priority, if any, prescribed by the deed) to the payment of the debts secured and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his heirs, personal representatives, or assigns. Every such notice of such sale shall show the following particulars:

First—The time and place of sale;

Second—The names of the parties to the deed under which it will be made;

Third—The date of the deed;

Fourth—The office and book in which it is recorded;

Fifth—The quantity and description of the land or other property, or both, conveyed thereby;

Sixth—The names of the persons secured or indemnified thereby;

Seventh—The amount secured and the time when payable;

Eighth—The amount of credits, if any, to which the same is subject;

Ninth—The amount of the principal and interest claimed to be due and unpaid, and for which the sale will be made. [S. L. 1877, p. 95, § 2.]

Manner of publishing notice.

SEC. 54. Notice of sale mentioned in the preceding section shall, in every case, be posted at least thirty days prior thereto on the front door of the court house of the county in which the property to be sold is, and by advertisement in some newspaper printed in the county for thirty days (Sundays and holidays excepted), or in case no newspaper be printed in the county, in some newspaper in general circulation therein, and a copy of such notice shall be served on the grantor in the deed, or his agent or personal representative, if he or they be within the county, at least twenty days prior to the sale. [S. L. 1877, p. 95, § 3.]

Form of deed on sale under trust deed.

SEC. 55. Every deed for real estate sold under a deed of trust may be made in the following form, or to the same effect:

This deed, made the —— day of ——, between A. B., trustee, of the first part, and C. D., of the second part, whereas the said trustee, by virtue of the authority vested in him by the deed of trust hereinafter mentioned (or by an order of the district court of the county of ———, made on the —— day of ——, (as the case may be), did sell, as required by law, a certain tract (or lot, as the case may be,) of land, situated in the county (or city, town or village, as the case may be,) of ———, conveyed by E. F. to the said A. B., trustee, (or to G. H., trustee, as the case may be,) by deed bearing date the —— day of ——, and recorded (if it be recorded,) in a deed book ——, on page ——, in the office of the recorder of the county of ———, and bounded and described therein as follows: (Here insert the description and quantity as set forth in the deed of trust and any further description deemed necessary); at which sale the said C. D. became the purchaser for the sum of ——— dollars. Now, therefore, this deed witnesseth that the said trustee hereby conveys and grants to the said C. D. the said real estate hereinbefore described, with all the right, title and interest held by the said E. F. therein, to have and to hold the said real estate and premises unto the said C. D., his heirs and assigns forever. Witness the following signature and seal.

————————[SEAL.]

—[S. L. 1877, p. 96, § 4.]

CHAPTER 4.

CLOUDS FROM TITLE.

SECTION.
56. Certain deeds executed before one witness legalized.
57. Certain deeds executed without proper certificate, legalized.
58. Mining records in Shoshone and California districts legalized.
59. Certain conveyances executed before one witness legalized.
60. Acknowledgments before clerks of courts legalized.
61. Certain conveyances executed before one witness legalized.
62. Conveyances without word "heirs" deemed to convey fee simple.
63. Certain conveyances acknowledged before notary public outside of territory legalized.
64. Certain conveyances executed before one witness legalized.
65. Acts of A. G. Turner as register of deeds of Carter Co. legalized.
66. Acts of Leavitt C. Barry as deputy notary public and deputy recorder of Carter Co. legalized.
67. Acts of J. W. Blake as notary public in Albany County legalized.
68. Acts of Samuel Rosendale, as notary public in Laramie County legalized.
69. Certain conveyances with defective certificates of acknowledgment legalized.

Certain deeds executed before one witness legalized.

Sec. 56. All deeds, mortgages or other instruments executed prior to December eleventh, eighteen hundred and seventy-three, in the presence of but one witness, shall be deemed as valid and binding as if the same had been executed in the presence of two witnesses, and shall be so construed by the courts of this territory, and the record thereof shall have the same force and effect as if such deeds, mortgages and other instruments had been executed in the presence of two witnesses; *Provided*, That such record shall in nowise affect the right or title of any person acquired in good faith, and for a valuable consideration, before the taking effect of this section; *And provided further*, That this section shall not be construed to affect any judgment or decree heretofore rendered by any court of the territory. [C. L. 1876, ch. 30, § 1.]

Certain conveyances executed without proper certficate, legalized.

Sec. 57. All deeds, mortgages or other instruments excuted prior to December eleventh, eighteen hundred and seventy-five, in other states, territories or districts of the United States, of lands or any interest in lands in this territory acknowledged before any proper officers, other than commissioners appointed by the governor of this territory for that purpose, and which have not attached thereto certificates of the clerks or other proper certifying officers of the courts of record of the respective counties or districts within which such acknowledgments were taken, shall be deemed as valid and binding as if such certificates were thereto attached, and shall be so construed by the courts of this territory, and the record thereof shall have the same force and effect as if such deeds, mortgages and other instruments had such certificates attached; *Provided*, That such record shall in no wise affect the right or title of any person, acquired in good faith, and for a valuable consideration, before the taking effect of this section; *And provided further*, That this section shall not be construed to affect any judgment or decree rendered by any court in this territory prior to December eleventh, eighteen hundred and seventy-five. [C. L. 1876, ch. 31, § 1.]

Mining records in Shoshone and California districts legalized.

Sec. 58. All the records of deeds and other instruments in writing, made with the intention to convey mines, mining grounds, lots, or other property, or to create a lien thereon, and the manner of the execution thereof, which deeds or other instruments were recorded in the records of either Shoshone or California mining districts, in the county of Carter, prior to November twenty-sixth, eighteen hundred and sixty-nine, are hereby declared legal and binding upon all parties interested therein, notwithstanding defective acknowledgments of records of such instruments. [C. L. 1876, ch. 74, p. 447, § 1.]

Certain conveyances executed before one witness legalized.

Sec. 59. All deeds, mortgages or other instruments executed prior to December twelfth, eighteen hundred and seventy-seven, in the presence of but one witness, shall be deemed as valid and binding as if the same had been executed in the presence of two witnesses, and shall be so construed by the courts of this territory, and the record thereof shall have the same force and effect as if such deeds, mortgages and other instruments had been executed in the presence of two witnesses; *Provided*, That such record shall in no wise affect the right or title of any person, acquired in good faith and for a valuable consideration, before that time; *And provided further*, That this section shall not be construed to affect any judgment or decree rendered by any court of the territory before December twelfth, eighteen hundred and seventy-seven. [S. L. 1877, p. 94, § 1.]

Acknowledgments before clerks of courts legalized.

SEC. 60. The acts of clerks of courts of record, prior to December tenth, eighteen hundred and seventy-nine, in taking acknowledgments to conveyances of real estate in this territory and of other instruments recorded in this territory prior to December tenth, eighteen hundred and seventy-nine, are hereby legalized and made binding upon the parties in interest, the same as if clerks of courts of record had authority to take acknowledgments; *Provided*, That the provisions of this section shall in no manner affect any suit or suits at that time pending in any of the courts in this territory, or that may have been instituted on or before the first day of January, eighteen hundred and eighty-one. [S. L. 1879, ch. 22, § 2.]

Certain conveyances executed before one witness legalized.

SEC. 61. All deeds, mortgages or other instruments executed in the presence of but one witness, prior to February twenty-fourth, eighteen hundred and eighty-two, shall be deemed as valid and binding as if the same had been executed in the presence of two witnesses, and shall be so construed by the courts of this territory, and the record thereof shall have the same force and effect as if such deeds, mortgages and other instruments had been executed in the presence of two witnesses; *Provided*, That such record shall in no wise affect the right or title of any person acquired in good faith and for a valuable consideration before said time. *And provided further*, That this section shall not be construed to affect any judgment or decree rendered by any court of the territory prior to said twenty-fourth day of February, eighteen hundred and eighty-two. [S. L. 1882, ch. 16, § 1.]

Conveyances without word "heirs" deemed to convey fee simple.

SEC. 62. All conveyances of real estate in this territory given before the third day of March, eighteen hundred and eighty-four, not containing the word "heirs," or other words of inheritance, shall be deemed and are hereby declared to convey an estate in fee simple, unless the intention to convey a less estate expressly appears, or the intention of the parties is shown to have been otherwise, or such intent is necessarily implied in the terms of the grant: *Provided*, That nothing in this section contained shall be construed as impairing or defeating any vested rights which shall have accrued before the said third day of March, eighteen hundred and eighty-four. [S. L. 1884, ch. 5, § 3.]

Certain conveyances acknowledged before notary public outside of territory legalized—Proviso.

SEC. 63. All deeds or conveyances of real estate given and recorded in this territory prior to March third, eighteen hundred and eighty-four, the execution of which shall have been acknowledged before a notary public out of this territory, where the certificate of official character attached to such deeds or other conveyance fails to state that such deed or conveyance was executed and acknowledged according to the laws of the state or territory in which the same was executed, shall be deemed as valid and binding as if such certificate had contained the statement aforesaid, and shall be so construed by the courts, and the record thereof shall have the same force and effect as if such certificate had contained said statement: *Provided*, That such record shall in no wise affect the right or title of any person acquired in good faith and for a valuable consideration before the said March third, eighteen hundred and eighty-four; *And provided further*, That this section shall not be construed to affect any judgment or decree rendered by any court of this territory before that time. [S. L. 1884, ch. 5, § 4.]

Certain conveyances executed before one witness legalized.

SEC. 64. All deeds, mortgages or other instruments executed prior to March sixth, eighteen hundred and eighty-four in the presence of but one witness, and admitted to record, which, under the laws of this territory, should have been executed in the presence of two witnesses, shall be deemed as valid and binding as if the same had been executed in the presence of two witnesses, and shall be so construed by the courts of this territory, and the records thereof shall have the same force and effect as if such deeds, mortgages and other instruments had been executed in the presence of two witnesses: *Provided*, That such record shall in no wise affect the right or title of any person acquired in good faith and for a valuable consideration before the said sixth day of March, eighteen hundred and eighty-four; *And, provided, further*, That this section shall not be construed to affect any judgment or decree rendered by any court of the territory before that time. [S. L. 1884, ch. 96, § 1.]

Acts of A. G. Turner as register of deeds of Carter County legalized.

SEC. 65. All official acts of A. G. Turner, as register of deeds for Carter County, or any of his deputies, up to and including December third, eighteen hundred and sixty-nine, are hereby legalized and declared valid in law, and all the books of record kept by the said Turner, or any of his deputies, which were in the recorder's office in said county on or before December third, eighteen hundred and sixty-nine, are declared legal and official records of the County of Carter, notwithstanding any irregularity in giving bonds by said Turner, or in not signing records made by him or his deputies, or any other irregularity; *Provided*, That this section shall not be construed to legalize any act that would of itself have been illegal, if the officer performing the same had been regularly qualified, and performed all the acts and duties concerning the same required by law. [C. L. 1876, ch. 74, p. 445, § 1.]

Acts of Leavitt C. Barry as deputy notary public and deputy recorder of Carter County legalized.

SEC. 66. All the acts of Leavitt C. Barry, either in taking acknowledgments of, or recording instruments as deputy notary public, or deputy recorder prior to November twenty-fourth, eighteen hundred and sixty-nine, in what was on the twenty-fourth day of November, eighteen hundred and sixty-nine, Carter County, are hereby declared as binding upon all parties in interest, as though the said supposed offices of deputy notary public or deputy recorder had existed in law; and said Barry shall be estopped in law in any proceedings against him growing out of his acts as deputy recorder or deputy notary public, from setting up the non-existence of said office. [C. L. 1876, ch. 74, p. 445, § 1.]

Acts of J. W. Blake as notary public in Albany County legalized.

SEC. 67. All the acts of J. W. Blake as notary public in and for the County of Albany, in this territory, from and after the sixteenth day of October, eighteen hundred and eighty-three, up to and including the ninth day of February, eighteen hundred and eighty-four, are hereby declared as binding upon all parties in interest, as though he had been acting during said time under a commission duly and legally issued to him by the governor of this territory; and all legal proceedings against the said J. W. Blake, that might be instituted, growing out of the fact that he was not, during said time, a duly qualified notary public in and for the County of Albany, this territory, are hereby estopped: *Provided*, That this section shall not be construed to legalize any act that would of itself have been illegal, if the officer performing the same had been regularly qualified, and performed all the acts and duties concerning the same required by law. [S. L. 1884, ch. 10, § 1.]

Acts of Samuel Rosendale as notary public in Laramie County legalized.

SEC. 68. All the acts of Samuel Rosendale, as notary public in and for the County of Laramie, in this territory, from and after the twenty-ninth day of December, eighteen hundred and eighty-three, up to and including the twentieth day of February, eighteen hundred and eighty-four, are hereby declared as binding upon all parties in interest as though he had been acting during said time under a commission duly and legally issued to him by the governor of this territory, and as though he, the said Samuel Rosendale, had duly qualified thereunder according to law, and all legal proceedings against the said Samuel Rosendale, that might be instituted, growing out of the fact that he was not, during said time, a duly qualified notary public in and for the County of Laramie, this territory, are hereby estopped: *Provided*, That this section shall not be construed to legalize any act that would of itself, have been illegal if the officer performing the same had been regularly qualified and performed all the acts and duties concerning the same required by law. [S. L. 1884, ch. 80, § 1.]

Certain conveyances with defective certificates of acknowledgment legalized.

SEC. 69. All deeds, mortgages, powers of attorney and other instruments heretofore executed and acknowledged in any other state, territory or district of the United States, and recorded in this territory, where the person taking the acknowledgment has omitted to state in his certificate of acknowledgment that such deed, mortgage, power of attorney or other instrument was executed and acknowledged according to the law of such state, territory or district, and where the laws of this territory, in relation to such certificate, have been in all other respects complied with, shall be deemed valid, and shall be so construed by the courts of this territory, and the record thereof shall have the same force and effect as if such deeds, mortgages, powers of attorney and other instruments had been acknowledged in the manner provided by the laws of this territory. And registers of deeds shall not be liable in an action of damages for having received for record, and recorded, any such deed, mortgage, power of attorney or other instrument. [S. L. 1886, ch. 21, § 61.]

CHAPTER 5.

CHATTEL MORTGAGES.

SECTION.
70. To be executed like conveyances of land.
71. To be recorded or possession transferred.
72. Where recorded.
73. Recording on removal of property to another county.
74 When mortgage takes effect.
75. Term for which mortgage lien continues—Affidavit of renewal.
76. What property may be mortgaged.
77. Description of mortgaged property-Increase and property of like kind to pass.
78. Permission to mortgagor to use and sell property--Restrictions.
79. When term of mortgage lien expires.
SECTION.
80. Foreclosure under power of sale.
81. Pre-requisites to forclosure.
82. Notice of foreclosure.
83. Prior proceedings not affected.
84. What notice shall specify.
85. Postponement of sale.
86. Sale, how conducted.
87. Place of sale.
88. Mortgagee may purchase.
89. Implied covenant to pay debt—Equity of redemption extinguished by sale.
90. Sale or removal of mortgaged property without consent, felony.
91. Rights under prior sales protected.

To be executed like conveyances of land.

SEC. 70. Every mortgage, bond, conveyance or other instrument intended to operate as a mortgage, of goods, chattels and personal property, shall be executed and acknowledged in the same manner, as provided by the laws of this territory for the execution of conveyances of land. [S. L. 1882, ch. 11, § 1.]

To be recorded or possession transferred.

SEC. 71. Every mortgage, bond, conveyance or other instrument intended to operate as a mortgage of goods, chattels and personal property, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the goods, chattels and personal property mortgaged shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless such mortgage, bond, conveyance or other instrument intended to operate as a mortgage shall be recorded as hereinafter provided. [S. L. 1882, ch. 11, § 2.]

Where recorded.

SEC. 72. Every such mortgage, bond, conveyance or other instrument intended to operate as a mortgage, shall be recorded in the office of the county clerk of the county where the property is, in a book to be kept by such clerk for that purpose, to be called the chattel mortgage record; *Provided*, however, that in the cases hereinafter provided for mortgaging cattle, horses, mules, sheep and other live stock, it shall be sufficient if such mortgagee bond, conveyance or instrument intended to operate as a mortgage is recorded in the county where the range, upon which such cattle, horses, mules, sheep and other live stock are or shall be principally running or ranging, is located. [S. L. 1882, ch. 11, § 3.]

Recording on removal of property to another county.

SEC. 73. In case of the removal of the mortgaged property, during the term or validity of the mortgage, bond, conveyance or instrument intended to operate as a mortgage, to some other county by the consent of the mortgagee, the mortgage, bond, conveyance or instrument intended to operate as a mortgage, shall thereupon be immediately recorded in the county to which the property is removed; *Provided*, however, that this section shall not apply to any live stock, horses or mules, temporarily used or being driven, or grazed in a county other than that in which the herd to which they may belong is permanently located. [S. L. 1882, ch. 11, § 4.]

When mortgage takes effect.

SEC. 74. Every such mortgage, bond, instrument or conveyance, intended to operate as a mortgage, shall take effect and be in force from and after the time of delivering the same to the clerk for record, and not before as to all creditors and subsequent purchasers and mortgagees in good faith, for valuable consideration and without notice; and all such mortgages, bonds, instruments or conveyances intended to operate as mortgages, shall be void as to all such subsequent purchasers and mortgagees, for valuable consideration, in good faith, and without notice, whose mortgages, bonds, conveyances or instruments intended to operate as mortgages shall be first recorded; *Provided*, That such mortgages, bonds, conveyances and instruments intended to operate as mortgages, shall be valid between the parties anything contained in this chapter to the contrary notwithstanding. [S. L. 1882, ch. 11, § 5.]

Term for which mortgage lien continues—Affidavit of renewal.

SEC. 75. Every such mortgage, bond, instrument or conveyance intended to operate as a mortgage, recorded in pursuance of this chapter, shall remain in full force and validity for the term for which it shall have been given, and for two months thereafter. Every such mortgage, bond, instrument or conveyance so recorded, shall cease to be valid as against the creditors of the person making the same, and as against subsequent purchasers or mortgagees in good faith, after the expiration of two months from and after the end of the term for which it shall have been given, unless before the expiration of the two months aforesaid, the mortgagee, his agent or attorney, shall make an affidavit, exhibiting the interest of the mortgagee at the time last aforesaid, in such mortgage, bond, conveyance or instrument intended to operate as a mortgage; and if said mortgage is to secure the payment of money, the amount yet due and unpaid; and such affidavit shall be recorded in all respects as the original mortgage is by this chapter required to be recorded; and a like affidavit which shall have the same effect may be recorded each succeeding year; and the original mortgage shall then continue to be in full force and virtue, for the term of one year from the time of recording such affidavit. And it shall be the duty of the county clerk in whose office the original mortgage, bond, conveyance or instrument intended to operate as a mortgage was originally recorded, upon the recording in his office of the affidavit hereinbefore required, to note upon the margin of such original record the recording of such affidavit, and all subsequent affidavits of renewal, together with a reference to the volume and page where such affidavit of renewal is recorded. [S. L. 1882, ch. 11, § 6.]

What property may be mortgaged.

SEC. 76. It shall and may be lawful for any person, firm or corporation to mortgage by any proper bond, conveyance or instrument intended to operate as a mortgage, executed in accordance with and subject to the provisions of this chapter, possessory claims to public lands, all buildings, fences, ranches and improvements thereon; all quartz, coal and other mining claims and all such personal property as shall be fixed in its structure to the soil; all neat cattle or herds of cattle, horses, mules, sheep or other live stock; and any and all other personal property owned, occupied or in possession of such mortgagor at the time of making such bond, conveyance or instrument intended to operate as a mortgage; and also all personal property of like kind and character as that described in such mortgage, bond, conveyance or instrument intended to operate as a mortgage, thereafter to be acquired, owned, occupied or possessed by such mortgagor; and this section shall apply to all mortgages, bonds, conveyances and instruments intended to operate as mortgages, heretofore as well as hereafter made, executed and recorded as provided in this chapter. [S. L. 1882, ch. 11, § 7.]

Description of mortgaged property—Increase and property of like kind to pass.

SEC. 77. In any mortgage, bond, conveyance or instrument intended to operate as a mortgage upon any neat cattle, horses, mules, sheep or other live stock, or upon any herd of neat cattle, horses, mules, sheep or other live stock in this territory, heretofore or hereafter given, made, executed and recorded as required by the provisions of this chapter, by any person, firm or corporation, it shall be a sufficient description of such cattle, horses, mules, sheep and other live stock to set forth therein all such brands and marks of the same as will convey to the mortgagee in all particulars the power and ability to identify, prove and recover any or all of such stock, that was possessed by the mortgagor at the time of making such mortgage; together with the ranches or range upon which such cattle, horses, mules, sheep or other live stock shall be running or ranging; and such mortgage, bond, conveyance or instrument intended to operate as a mortgage shall be held to convey and cover all the cattle, horses, mules, sheep or other live stock which shall then be marked or branded with the said mark and brand belonging to the mortgagor, and which thereafter may be acquired by him, and be marked and branded with the said mark and brand, and also such mark or brand; and also all the increase of the said cattle, horses, mules, sheep or other live stock, and herds of cattle, horses, mules, sheep or other live stock; *Provided*, that no rights or liabilities existing under any mortgage, bond, conveyance or instrument intended to operate as a mortgage, made and executed prior to the passage hereof shall in any way be affected by this chapter. [S. L. 1882, ch. 11, § 8.]

Permission to mortgagor to use and sell property—Restrictions.

SEC. 78. It shall and may be lawful for the parties to any mortgage, bond, conveyance or instrument intended to operate as a mortgage of personal property under this chapter, to insert therein permission to the mortgagor to use, handle, operate, herd, manage and control the property mortgaged, and to market, sell and dispose of portions thereof as may be necessary in the course of business, or to preserve and care for the same, and replace such property or parts sold with other property of like kind and character, which shall be subject to the operation and effect of such mortgage, bond, conveyance or instrument intended to operate as a mortgage, and this section shall apply to all mortgages, bonds, conveyances or instruments intended to operate as mortgages heretofore given; *Provided*, however, that such permission shall not allow the mortgagor to retain and use the proceeds of any such sale or sales to his own use, but the same shall be applied as and towards the payment of the debt or obligation secured by such mortgage, bond, conveyance or instrument intended to operate as a mortgage; *and provided further*, that nothing herein contained, shall be held and taken to affect in any way, any rights or liabilities existing under any mortgage, bond, conveyance or instrument intended to operate as a mortgage, made, executed and recorded prior to February twenty-eighth, eighteen hundred and eighty-two. [S. L. 1882, ch. 11, § 9.]

When term of mortgage lien expires.

SEC. 79. Every mortgage, bond, conveyance or instrument intended to operate as a mortgage, heretofore given and recorded or which may hereafter be given and recorded under the provisions of this chapter shall cease to be valid as against the creditors of the mortgagor, or as against subsequent purchasers or mortgagees for valuable consideration and in good faith, after the expiration of two months from and after the end of the term for which it shall have been given, unless the same shall be renewed and continued as in this chapter provided, or unless before the expiration of the two months aforesaid, notice of foreclosure shall be given as hereafter required; *Provided*, that such mortgage shall nevertheless continue to be valid between the parties. [S. L. 1882, ch. 11, § 10.]

Foreclosure under power of sale.

SEC. 80. Every mortgage, bond, conveyance or instrument intended to operate as a mortgage containing and giving to the mortgagee, or any other person a power to sell the property described therein upon default being made in the condition of such mortgage, bond, conveyance or instrument, intended to operate as a mortgage, may be foreclosed in the cases and in the manner hereinafter specified. [S. L. 1882, ch. 11, § 11.]

Prerequisites to foreclosure.

SEC. 81. To enable any person to foreclose such mortgage, bond, conveyance or instrument intended to operate as a mortgage, it shall be requisite:

First—That some default in a condition of such mortgage, bond, conveyance or instrument intended to operate as a mortgage shall have occurred by which the power to sell becomes operative;

Second—That no suit or proceeding shall have been instituted at law to recover the debt or obligation then remaining secured by such mortgage, bond, conveyance or instrument intended to operate as a mortgage, or any part thereof; or if any suit or proceeding has been instituted that the same has been discontinued, or that an execution upon the judgment thereon has been returned unsatisfied in whole or in part;

Third—That such mortgage or conveyance containing the power of sale has been duly recorded as required by this chapter. [S. L. 1882, ch. 11, § 12.]

Notice of foreclosure.

SEC. 82. Notice that such mortgage or conveyance will be foreclosed by a sale of the mortgaged property, or some part thereof, shall be given by an advertisement published in some weekly newspaper published in the county in which such sale shall take place, for three times in three consecutive issues of such weekly newspaper; or in case no weekly newspaper is published in said county, by posting up notices in at least three public places in said county, one of which shall be at the place designated in said notices for the sale to take place, and such notices shall be posted at least three weeks prior to the day of sale. [S. L. 1884, ch. 13, § 1.]

Prior proceedings not affected.

SEC. 83. All proceedings by notice and advertisement of the sale of property under foreclosure of chattel mortgages made, had and conducted according to laws then existing prior to March sixth, eighteen hundred and eignty-four, shall be in all respects as valid and binding as if this chapter had not been passed. [S. L. 1884, ch. 13, § 2.]

What notice shall specify.

SEC. 84. Every such notice shall specify:

First—The date of the mortgage, bond, conveyance or instrument intended to operate as a mortgage, and the date when and place where the same was recorded;

Second—The names of the mortgagee and mortgagor and the assignee of the mortgage if any;

Third—The amount claimed to be due thereon at the time of the first publication or posting of such notice;

Fourth—A description of the mortgaged property conforming substantially with that contained in the mortgage;

Fifth—The time and place of sale. [S. L. 1882, ch. 11, § 14.]

Postponement of sale.

SEC. 85. Such sale may be postponed, from time to time, by inserting a notice of such postponement as soon as practicable, in the newspaper in which the original notice was published, and continuing such publication until the time to which the sale shall have been postponed; or in case no newspaper published in the county in which such sale is to be had, by posting notices of such adjournment in the same manner and at the same places as the original notices were posted, as required by this chapter. [S. L. 1882, ch. 11, § 15.]

Sale, how conducted.

SEC. 86. Such sale shall be at public auction, in the day time, between the hours of ten a. m., and four p. m., in the county where the mortgage was first recorded, or in any county to which the property may have been removed by consent of the parties and in which the mortgage was duly recorded. [S. L. 1882, ch. 11, § 16.]

Place of sale.

SEC. 87. When the property, goods or chattels so to be sold, consists of neat cattle, horses, mules, sheep or other live stock, or of any herd or part of any herd of neat cattle, horses, mules, sheep or other live stock, or of any brand or mark by which the same shall be known, designated, marked or branded; or of possessory claims to public lands, and buildings, fences, ranches and improvements thereon; or of any quartz, coal or other mining claims; such sale may take place at the court house in the county where such mortgage, bond, conveyance or instrument intended to operate as a mortgage was first recorded; or in case that the property to be sold, has been removed to some other county, by the consent of the parties as hereinbefore provided, then such sale may be had and take place at the court house in the county to which such property has been removed and when such mortgage, bond, conveyance or instrument intended to operate as a mortgage has been duly recorded as hereinbefore required. In all other cases the sale shall take place in view of said property. [S. L. 1882, ch. 11, § 17.]

Mortgagee my purchase.

SEC. 88. The mortgagee, his assignees, and his or their legal representatives, may fairly and in good faith purchase any of the mortgaged property offered at such sale. [S. L. 1882, ch. 11, § 18.]

Implied covenant to pay debt—Equity of redemption extinguished by sale.

SEC. 89. All mortgages, bonds, conveyances or instruments intended to operate as mortgages of personal property, given and recorded under this chapter, shall be deemed and held to contain an implied covenant, unless the contrary is therein expressed, by the mortgagor to pay the debt or obligation and interest specified in such mortgage, bond, conveyance or instrument intended to operate as a mortgage; and when such mortgage, bond, conveyance or instrument intended to operate as a mortgage shall have been foreclosed, as herein provided, all equity of redemption which the mortgagor may or might have had, shall be and become extinguished; and in case any deficiency remain after such sale, such mortgagor may be held liable in an action at law for such deficiency. [S. L. 1882, ch. 11, § 19.]

Sale or removal of mortgaged property without consent, a felony.

SEC. 90. Any person who after having conveyed any goods, chattels, personal property, rights or privileges to another by mortgage, bond, conveyance or instrument intended to operate as a mortgage, shall, during the existence of the lien created thereby, sell the said property, rights or privileges, or any part thereof, to any person or persons or corporation, without first procuring the consent of the mortgagee thereof to such sale, or shall remove such mortgaged property, or any part thereof, out of the jurisdiction of the district court of the county within which such property was at the time such mortgage was given with intent to deprive the mortgagee of his security, without first obtaining the consent of the mortgagee thereof to such removal, shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary for a term not exceeding ten years, and not less than one year, and be fined in a sum not exceeding five hundred dollars. [S. L. 1882, ch. 11, § 20.]

Rights under prior sales protected.

SEC. 91. Nothing contained in this chapter shall in anywise affect the rights, privileges or title of any person acquired in good faith and for a valuable consideration before February twenty-eighth, eighteen hundred and eighty-two; *Provided*, that this chapter shall not be construed to affect any judgment or decree heretofore rendered by any court of this territory. [S. L. 1882, ch. 11, § 21.]

TITLE 2. ASSIGNMENTS.

CHAPTER 2.

GENERAL PROVISIONS.

SECTION.
92. Insolvent debtor may make.
93. Insolvent debtor defined.
94. Foreign assignments and certain transfers not affected.
95. What liabilities may be provided for.
96. When assignment is void.
97. Requisites of valid assignment.
98. Non-compliance with last section invalidates assignment.
99. Assignee is not purchaser for value.
100. Inventory and its requisites.
101. Verification of inventory.
102. Where assignment recorded and inventory filed.
103. Where recorded, etc., if more than one assignor.
104. Assignment void unless recorded and inventory filed.
105. When assignment embraces real property, where recorded.

SECTION.
106. Bond of assignee.
107. When assignee authorized to dispose of realty.
108. When assignee required to account.
109. Accounting and order to distribute funds.
110. Discharge of assignee on failure to account.
111. Removal for misconduct.—Filling vacancy.
112. What property does not pass by assignment.
113. Compensation of assignee.
114. Assignee not liable when assignment held void.
115. Assignment not to be cancelled without assent of creditors.
116. Sheriff to serve notice--Fees of officers.
117. Final settlement.
118. Acceptance of dividend discharges assignor.

Insolvent debtors may make.

SEC. 92. An insolvent debtor may in good faith execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter. [S. L. 1877. p. 3, § 1.]

Insolvent debtor defined.

SEC. 93. A debtor is insolvent, within the meaning of this chapter, when he is unable to pay his debts from his own means, as they become due. [S. L. 1877, p. 3, § 2.]

Foreign assignments and certain transfers not affected.

SEC. 94. The provisions of this chapter do not prevent a person residing in another state, or county, from making therein in good faith, and without intent to evade the laws of this territory, a transfer of property situated within it, nor do they affect the power of a person, although insolvent and within this territory, to transfer property to a particular creditor in good faith, for the purpose of securing or paying the whole or a part of a debt owing to such creditor, whether in his own right or otherwise. [S. L. 1877, p. 3, § 3.]

What liabilities may be provided for.

SEC. 95. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor, which he might lawfully pay, whether absolute or contingent. [S. L. 1877, p. 3, § 4]

When assignment is void.

SEC. 96. An assignment for the benefit of creditors is void against any creditor of the assignor, not assenting thereto in the following cases:

First. If it gives preference of one debt or class of debts over another;

Second—If it tend to coerce any creditor to release or compromise his demand;

Third—If it provide for the payment of any claim known to the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor;

Fourth—If it reserve any interest in the assigned property or any part thereof to the assignor or for his benefit, before all his existing debts are paid;

Fifth—If it confer upon the assignor any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purpose of the trust;

Sixth—If it exempt him from liability for neglect of duty or misconduct. [S. L. 1877, p. 3, § 5.]

Requisites of valid assignment.

SEC. 97. An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent, thereto authorized by writing, it must be acknowledged or proved and certified, in the mode provided by the laws of this territory for the acknowledging of instruments for the conveyance of real estate, and before the same shall be in force it must be filed and recorded in the office of the probate judge of the proper county, as prescribed by this chapter, but recording in one county constitutes a compliance with the following section. [S. L. 1877, p. 4, § 6.]

Non-compliance with last section invalidates assignment.

SEC. 98. Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void as against every creditor of the assignor not assenting thereto. [S. L. 1877, p. 4, § 7.]

Assignee is not purchaser for value.

SEC. 99. An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment. [S.L. 1877, p. 4, § 8.]

Inventory and its requisites.

SEC. 100. Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file in the manner prescribed by section one hundred and two a full and true inventory, showing;

1. All the creditors of the assignor;
2. The place of residence of each creditor, if known to the assignor; if not known, that fact must be so stated;
3. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account or otherwise;
4. The true consideration of the liability in each case and the place where it arose;
5. Every existing judgment, mortgage or other security for the payment of any debt or liability of the assignor;
6. All the property of the assignor at the date of the assignment, which is exempt by law from execution; and
7. All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property, according to the best knowledge of the assignor. [S. L. 1877, p. 4, § 9.]

Verification of inventory.

SEC. 101. An affidavit must be made by every person making an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief. [S. L. 1877, p. 5, § 10.]

Where assignment recorded and inventory filed.

SEC. 102. An assignment for the benefit of creditors must be recorded, and the inventory required by section one hundred filed with the probate judge of the county in which the assignor resided at the date of the assignment, or if he did not then reside in this territory, with the probate judge of the county in which his principal place of business was then situated, or if he had not then a residence or place of business in this territory, with the probate judge of the county in which the principal part of the assigned property was then situated. [S. L. 1877, p. 5, § 11.]

Where recorded, etc., if more than one assignor.

SEC. 103. If any assignment for the benefit of creditors is executed by more than one assignor it may be recorded, and a copy of the inventory required may be filed with the probate judge of the county in which any of the assignors resided at its date, or in which any of them not then residing in this territory had then a place of business. [S. L. 1877, p. 5, § 12.]

Assignment void unless recorded and inventory filed.

SEC. 104. An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value, unless it is recorded and unless the inventory required is filed pursuant to this chapter within twenty days after the date of the assignment. [S. L. 1877, p. 5, § 13.]

When assignment embraces real property, where recorded.

SEC. 105. When an assignment for the benefit of creditors embraces real property, it must also be recorded in the office of the register of deeds of the county in which such real estate lies, and if such real estate is situated in more than one county, then in each of such counties. [S. L. 1887, p. 5, § 14.]

Bond of assignee.

SEC. 106. Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the people of this territory in such amount as may be fixed by the probate judge of the county in which the original inventory is filed, with sufficient sureties, to be approved by the judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory. [S. L. 1877, p. 6, § 15.]

When assignee authorized to dispose of realty.

SEC. 107. Until the inventory and affidavit required by this chapter have been made and filed and the assignee has given bond as required, the assignee for the benefit of creditors has no authority to dispose of the real estate or convert it to the purposes of trust. [S. L. 1877, p. 6, § 16.]

When assignee required to account.

SEC. 108. After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the probate judge of the county where the accompanying inventory was filed, in the manner prescribed in the next succeeding section. [S. L. 1877, p. 6, § 17.]

Accounting and order to distribute funds.

SEC. 109. Upon the presentation of the petition provided for in the preceding section, if such petition contains a prayer to ascertain if the assignees have funds in their hands, then the assignees shall be required to present their accounts before the said probate judge, and if they have funds in their hands said probate judge shall make an order requiring them to distribute them without delay. [S. L. 1877, p. 6, § 18.]

Discharge of assignee on failure to account.

SEC. 110. Should the assignees refuse or neglect to render their accounts, as required by the preceding section, upon reasonable notice of the filing of such petition to be given on the order of such probate judge, or if they refuse or neglect to pay over a dividend when they shall have, in the opinion of said probate judge, sufficient funds for that purpose in their hands, said probate judge shall immediately discharge such assignees from trust and shall have power to appoint others in their place; the assignees so discharged shall deliver over to those appointed by said probate judge all the funds, property, books, vouchers and securities belonging to the insolvent, without charging any commission or expenses thereon, and shall also be condemned to pay to the new assignee, for the benefit of the mass of the creditors, twenty per cent. in addition to the amount of funds in their hands. [S. L. 1877, p. 6, § 19.]

Removal for misconduct—Filling vacancy.

SEC. 111. The probate judge aforesaid shall have the power to remove any assignee for any misconduct or mis-management of the estate in his charge, as such assignee, upon petition of any of the creditors of the insolvent, and when his office shall become vacant by virtue of such removal or from death, resignation or otherwise, then it shall be the duty of such probate judge to appoint another assignee, who shall immediately qualify, by filing bond and affidavit, and who shall in all respects be subject to, and comply with the provisions of this chapter. [S. L. 1877, p. 7, § 20.]

What property does not pass by assignment.

SEC. 112. Property exempt from execution and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them and declares an intention that they should pass thereby. [S. L. 1877, p. 7, § 21.]

Compensation of assignee.

SEC. 113. In the absence of any provision in the assignment, to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and administrators, but the assignment cannot grant more, and may restrict the commission to a less amount, or deny them altogether. [S. L. 1877, p. 7, § 22.]

Assignee not liable when assignment held void.

SEC. 114. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void. [S. L. 1877, p. 7, § 23.]

Assignment not to be cancelled without assent of creditors.

SEC. 115. An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be cancelled or modified by the parties thereto, without the consent of every creditor affected thereby. [S. L. 1877, p. 7, § 24.]

Sheriff to serve notices—Fees of officers.

SEC. 116. All notices required to be served by virtue of this chapter shall be served by the sheriff, who shall receive the same compensation therefor as he is allowed for similar services rendered for the district court, and the probate judge shall receive such compensation for his services rendered herein as he is entitled to by law for similar services rendered by him under the law relating to executors and admistrators, and all expenses allowed by law, by virtue of this chapter, shall be paid by the assignee out of the insolvent estate. [S. L. 1877, p. 7, § 25.]

Final settlement.

SEC. 117. So soon as the same can be done, in the opinion of the probate judge, the assignee shall make final settlement of the estate, and upon a satisfactory settlement and showing, shall be entitled to his discharge. [S. L. 1877, p. 7. § 26.]

Acceptance of dividend discharges assignor.

SEC. 118. In all cases where the assignor complies with the provisions of this chapter any creditor accepting from the assignee his dividend arising from the property of the assignor to which he would be entitled under any assignment made under this chapter, shall release the assignor from all further liability on the claim or claims on which said payment may be made. [S. L. 1877, p. 8, § 27.]

TITLE 3. ATTORNEYS AT LAW.

CHAPTER 1.

GENERAL PROVISIONS.

SECTION.
119. Attorneys heretofore permitted to practice may continue.
120. Qualications for admission in district courts
121. Admission to supreme court.
122. Admission on certificate from other territory or state.
123. Admission of foreign attorneys.
124. Effect of admission to supreme court.
125. Form of oath—Attorney cannot be surety on bond.
126. License of attorney may be revoked or suspended.
127. Causes for revocation or suspension.
128. Penalty for deceit or collusion.
129. Commencement of proceedings to disbar.
130. Notice to accused.
SECTION.
131. Pleadings by accused—Trial.
132. Judgment on plea of guilty or failure to answer.
133. Disbarment proceedings where offense not committed in presence of court.
134. Where action is for slander of court, accused may prove truth of charge.
135. Judgment, if found guilty.
136. Appeal to supreme court.
137. Attorney may be required to show authority.
138. Attorney's lien.
139. Embezzlement by attorney.—Penalty.
140. No violation if money justly retained as fees
141. Fees for defending pauper prisoners.

Attorneys heretofore permitted to practice may continue.

SEC. 119. All persons who by the law heretofore in force were permitted to practice as attorneys and counselors, may continue the practice as such. [C. L. 1876, ch. 6, § 1.]

Qualifications for admission in district court.

SEC. 120. Any person being a citizen of the United States, who has read law for two years, the last of which must be in the office of one of the judges, or of a regularly practicing attorney, who shall certify that the said applicant is a person of good moral character, and well qualified to practice law, who is actually an inhabitant of this territory, and who satisfies any district court of this territory that he possesses the requisite learning, and that he is of good moral character, may, by such court, be permitted to practice in all district and inferior courts of this territory, upon taking the oath hereinafter prescribed. [C. L, 1876, ch. 6, § 2.]

Admission to supreme court.

SEC. 121. The supreme court may, on motion, admit any practicing attorney of the district court to practice in the supreme court. [C. L. 1876, ch. 6, § 3.]

Admission on certificate from other territory or state.

SEC. 122. Any person having been admitted to practice law in any state or territory, may be admitted, on motion, to practice in the supreme or district courts of this territory upon presentation of his certificate of admission to the bar, and upon taking the oath now provided by law to be taken by persons applying for admission as attorneys; *Provided*, That any such person shall show to the satisfaction of the court that he is still in good standing and possesses a good moral character. [S. L. 1879, ch. 7, § 1.]

Admission of foreign attorneys.

SEC. 123. Any practicing attorney of any state or territory, having professional business in either the supreme or district court, may, on motion, be admitted to practice in either of those courts upon taking the oath aforesaid. [C. L. 1876, ch. 6, § 4.]

Effect of admission to supreme court.

SEC. 124. Admission to the bar of the supreme court of the territory shall entitle the person so admitted to practice as an attorney, counsellor or solicitor in all the courts of the territory; *Provided*, That this section shall have no application to any attorney, counselor or solicitor, who has been lawfully disbarred or who may hereafter be disbarred by any court of record in this territory. [S. L. 1882, ch. 6, § 1.]

Form of oath—Attorney cannot be surety on bond.

SEC. 125. The form of the oath aforesaid shall be in substance as follows: "You do solemnly swear that you will support the constitution of the United States, and the organic act of this territory, and that you will faithfully discharge the duties of an attorney and counselor to the best of your ability," and no practicing attorney shall be taken on any official bond, or bond in any legal proceeding in the district in which he may reside. [C. L. 1876, ch. 6, § 5.]

License of attorney may be revoked or suspended.

SEC. 126. The supreme and district courts may respectively revoke or suspend the license of any attorney or counselor at law to practice therein. [C. L. 1876, ch. 6, § 10.]

Causes for revocation or suspension.

SEC. 127. The following are sufficient causes for such revocation or suspension:

First, When he has been convicted of a felony or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is sufficient evidence.

Second, When he is guilty of a wilful disobedience or violation of the order of the court requiring him to do, or forbear an act connected with, or in the course of his profession.

Third, Neglecting or refusing on demand to pay over money in his hands, due or belonging to a client.

Fourth, Destroying, secreting, fraudulently withdrawing, mutilating or altering any paper of record belonging to the files or records in any action or proceeding.

Fifth, For the wilful violation of any of the duties of attorney or counselor. [C. L. 1876, ch. 6, § 11.]

Penalty for deceit or collusion.

SEC. 128. An attorney and counselor who is guilty of deceit or collusion or consent thereto, with intent to deceive a court or judge, or a party to an action or proceeding, or brings suit or commences proceedings without authority therefor, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action. [C. L. 1876, ch. 6, § 6.]

Commencement of proceedings to disbar.

SEC. 129. The proceedings to remove or suspend an attorney, may be commenced by the direction of the court, or on motion of any person interested. In the former case the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to, by the person making it. [C. L. 1876, ch. 6, § 12.]

Notice to accused.

SEC. 130. If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer on a day therein fixed, either at the same or subsequent term, and shall cause a copy of the accusation and order to be served upon him personally. [C. L. 1876, ch. 6, § 13.]

Pleadings by accused—Trial.

SEC. 131. To the accusation he may plead or demur, and the issue joined thereon shall in all cases, be tried by the court, except as provided in section one hundred and thirty-three, all the evidence being reduced to writing, filed and preserved. [C. L. 1876, ch. 6, § 14.]

Judgment on plea of guilty or failure to answer.

SEC. 132. If the accused plead guilty or fail to answer, the court shall proceed to render such judgment as the case requires. [C. L. 1876, ch. 6, § 15.

Proceedings, where offense not committed in presence of court.

SEC. 133. All proceedings to revoke or suspend the license of an attorney or counselor-at-law, to practice in the supreme and district courts of this territory, where the accusation charges or states as a cause for such revocation or suspension any matter or thing not occurring in the actual presence of the court offended against, shall be brought in the district courts of the territory, and the attorney or counsellor so accused shall be entitled to a trial by jury, and in the trial of such case the proceedings shall be in conformity with the law governing and controlling criminal cases. [S. L. 1886, ch. 92, § 1.]

Where action is for slander of court, accused may prove truth of charge.

SEC. 134. If the accusation against such attorney or counsellor is for slanderous or libelous words spoken or published of or concerning the said district court or supreme court, the defendant so accused may allege and prove the truth of the matter charged as defamatory. [S. L. 1886, ch. 92, § 2.]

Judgment, if found guilty.

SEC. 135. If the attorney or counselor be found guilty on such charge, or if the court shall find him guilty on any charge made under this chapter, the judgment of the court shall be that the license of such attorney to practice in the court against which he has offended be revoked, or that he be suspended from practice in said court for a time certain, and any other or different judgment is and shall be unlawful and void. [S. L. 1886, ch. 92, § 3.]

Appeal to supreme court.

SEC. 136. In case of a removal or suspension being ordered by a district court, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the docket entries, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal in the district court is final. [C. L. 1876, ch. 6, § 16.]

Attorney may be required to show authority.

SEC. 137. The court may, on motion of either party, and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove, by his own oath or otherwise, the authority under which he appears, and until he does so, may stay all proceedings by him, on behalf of the parties, for whom he assumes to appear. [C. L. 1876, ch. 6, § 7.].

Attorney's lien.

SEC. 138. An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession, in the course of his professional employment, upon money in his hands belonging to his client, and upon money due to his client, and in the hands of the adverse party, in an action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party. [C. L. 1876, ch. 6, § 8.]

Embezzlement by attorney—Penalty.

SEC. 139. An attorney who receives the money or property of his client in the course of his professional business of the value of twenty-five dollars or less, and refuses to pay or deliver it immediately after demand, is guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of one hundred dollars or imprisonment in the county jail for six months, or by both such fine and imprisonment; and in all cases where such money or property is so received and payment or delivery thereof is refused upon demand as aforesaid when such property or money exceeds the value of twenty-five dollars, such attorney so offending shall be deemed to be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than twenty years. [S. L. 1882, ch. 5, § 1.]

No violation if money justly retained as fees.

SEC. 140. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section for the amount of money or property justly held as fees. [C. L. 1876, ch. 6, § 18.]

Fees for defending pauper prisoners.

SEC. 141. Every attorney duly appointed by the court for the defense of a prisoner indicted by the grand jury of any county within this territory, shall be entitled to a fee of fifteen dollars in each case of misdemeanor, of twenty-five dollars in each case of felony, and a fee of fifty dollars in each capital case, to be paid out of the county treasury, upon a certificate of the presiding judge that such services were so rendered; and when more than one person is on trial at the same time upon the same indictment, but one fee shall be allowed; nor shall a plea of guilty where more than one person is indicted in one indictment, be considered as more than one trial, whether made by one or more persons so indicted; and to be allowed more than one charge there shall be more than one separate and actual trial. [S. L. 1879, ch. 8, § 1.]

TITLE 4. CITIES AND TOWNS.

CHAPTER 1. CHEYENNE CHARTER.
CHAPTER 2. CHEYENNE WATER SUPPLY.
CHAPTER 3. CHEYENNE FUNDING BONDS.
CHAPTER 4. CHEYENNE FILTER-BED BONDS.
CHAPTER 5. LARAMIE CHARTER.
CHAPTER 6. LARAMIE WATER WORKS.
CHAPTER 7. LARAMIE SEWERAGE.
CHAPTER 8. EVANSTON CHARTER.
CHAPTER 9. BUFFALO CHARTER.
CHAPTER 10. SHERIDAN CHARTER.
CHAPTER 11. RAWLINS CHARTER.
CHAPTER 12. GENERAL INCORPORATION OF TOWNS.

CHAPTER 1.

CHEYENNE CHARTER.

SECTION.
142. Corporate limits and name.
143. General corporate powers.
144. Powers exercised by mayor and council.
145. City divided into wards.
146. Police justices—Appointment and jurisdiction.
147. Mayor and councilmen—Term of Office—Qualifications--Annual elections.
148. Qualifications of electors—Paying poll tax.
149. Regular meetings of council.
150. Duties of mayor--Casting vote.
151. City officers—Appointment—Term of office and removal.
152. Mayor to sign orders, drafts and deeds.
153. Approval and veto of mayor.
154. Advisory powers of mayor.
155. Special meetings, how called.
156. Officers to exhibit accounts, etc , on mayor's request.
157. Jurisdiction of mayor.
158. Vacancy in office of mayor—New election.

SECTION.
159. Mayor may remit fines and grant pardons.
160. General powers of mayor and council.
161. Enumeration of specific corporate powers.
162. Disposition of fines.
163. Fees of police justices.
164. Punishment by fine and imprisonment.
165. Appeal from police justice to district court.
166. Police justices may punish for contempt.
167. Marshal's powers as chief of police.
168. Powers of policemen.
169. Policemen subject to orders of mayor and marshal.
170. Marshal subject to orders of mayor.
171. Duties of officers.—Appointment of deputy clerk and treasurer.
172. Compensation of officers.
173. Malfeasance of officer—Penalty—Removal of mayor.
174. Official year—City is legal successor of former municipal government.

Corporate limits and name.

SEC. 142. All that portion of the Territory of Wyoming, situated on Crow Creek, in the County of Laramie, where the Union Pacific railroad crosses the same, laid out and platted as a town site by the Union Pacific Railroad Company under and by the name of Cheyenne, is hereby declared to be a corporation, by the name of the City of Cheyenne. [S. L. 1877, p. 37, § 1.]

General corporate powers.

SEC. 143. The said City of Cheyenne is hereby made a body corporate and politic, and invested with all the powers and attributes of a municipal corporation, and shall have power to sue and be sued; to purchase and hold real and personal property for the use of the city; to sell and convey any real or personal property, and make such order respecting the same as may be conducive to the interests of the city; to make all contracts and do all other acts in relation to the property and affairs of the city necessary to the exercise of its corporate or administrative powers; to have and use a corporate seal, and alter the same at pleasure; to exercise such other and further powers as are or may be conferred by law. [S. L. 1877, p. 37, § 2.]

Powers exercised by mayor and council.

SEC. 144. The powers hereby granted shall be exercised by a mayor and council, consisting of nine members. [S. L. 1877, p. 38, § 3.]

City divided into wards.

SEC. 145. The said city shall be divided into three wards, as follows:

All that portion of the city lying south of the center of Seventeenth street shall constitute the first ward.

All that portion of the city lying north of the center of Seventeenth street and east of the center of Central avenue shall constitute the Second ward.

All that portion of the city lying north of the center of Seventeenth street and west of the center of Central avenue shall constitute the Third ward. [S. L. 1886, ch. 19, § 2.]

Police justices—Appointment and jurisdiction.

SEC. 146. It shall be the duty of said council to designate two justices of the peace, residents of said city, who shall be styled police justices, and they shall have concurrent jurisdiction to hear and determine all cases arising under the ordinances of said city, and the practice before such justices in such cases shall conform, as near as may be, to the provisions of the justices' code concerning complaints and continuances shall govern. [S. L. 1886, ch. 19, § 5.]

Mayor and councilmen—Term of office—Qualifications—Annual elections.

SEC. 147. Hereafter the mayor of said city shall be elected for the term of two years, and shall hold his office for such term and until his successor is duly elected and qualified. Each ward shall be represented in the council by three councilmen. The annual election shall be held on the second Tuesday in January of each year, and at such annual election each ward shall elect one member of the council to serve three years. At such election the polls in each ward shall be opened at nine o'clock a. m. and remain open until four o'clock p. m. No person shall be eligible to office of mayor or councilman who is not a resident freeholder of said city at the time of his election and does not possess all the qualifications required of electors under this charter. [S. L. 1877, p. 38, § 6. S. L. 1882, ch. 12, § 1.]

Qualifications of electors—Paying poll tax.

SEC. 148. Every legal voter of this territory, who shall have been a bona fide resident of his ward five days and of the city three months next preceding any city election, shall be qualified to vote therein at such election; *Provided*, That no person shall be deemed a qualified elector at any such election who has not paid a poll tax for the year preceding the one in which such election is held, which poll tax to entitle a person to vote must have been paid at least twenty days previous to the day of such election; *Provided*, That no person shall be disqualified from voting under this chapter by reason of not having paid such poll tax, if he or she is not required by law to pay such poll tax. [S. L. 1877, p. 38, § 7. S. L. 1882, ch. 12, § 2.]

Regular meetings of council.

SEC. 149. Regular meetings of the city council shall be held on the first and third Tuesdays in each month. [S. L. 1877, p. 38, § 8.]

Duties of mayor—Casting Vote.

SEC. 150. The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, and none other, and shall have the superintending eontrol of all the officers and affairs of the city, and shall take care that the ordinances of the city and this chapter are complied with; the mayor shall commission all officers appointed or clected. [S. L. 1877, p. 39, § 9.]

City officers—Appointment—Term of office and removal.

SEC. 151. There shall be a city treasurer, clerk, attorney, marshal, chief engineer of the fire department, civil engineer, and such policemen as may be required, who shall be appointed by the mayor, by and with the consent of the council, each of whom shall hold his office for the term of two years, from the date of his said appointment and confirmation, and until his successor is duly appointed and qualified; *Provided*, That any of said officers may be sooner removed by the mayor, the council concurring, for inefficiency, incompetency, or mal-administration of his office. When any nomination of the mayor is not confirmed, it shall be his duty to send in other names, until the council does confirm. [S. L. 1886, ch. 19, § 3.]

Mayor to sign orders, drafts and deeds.

SEC. 152. The mayor shall sign all orders and drafts drawn upon the treasurer for money, and require the city clerk to attest the same and affix thereto the seal of the city, and keep an accurate record thereof, in a book to be provided for that purpose. And all conveyances of real estate by said city shall be signed by the mayor and have attached thereto the official seal of the the city, and be attested by the city clerk. [S. L. 1877, p. 39, § 11. S. L. 1879, ch. 14, § 5.]

Approval and veto of mayor.

SEC. 153. The mayor shall have power to sign or veto any ordinance passed by the city council; *Provided*, That any ordinance vetoed by him may be passed over his veto by a vote of two-thirds of the members of the council elected, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance or return the same, with his objections, in writing, at the next regular meeting of the council, the same shall become an ordinance without his signature. [S. L. 1877, p. 39, § 12.]

Advisory powers of mayor.

SEC. 154. He shall, from time to time, communicate to the city council such information, and recommend such measures, as in his opinion may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city. [S. L. 1877, p. 39, § 13.]

Special meetings, how called.

SEC. 155. The mayor and any three councilmen, or a majority of the councilmen, shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk. [S. L. 1877, p. 39, § 14.]

Officers to exhibit accounts, etc., on mayor's request.

SEC. 156. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make a report to the council in writing touching any subject or matter he may require pertaining to his office. [S. L. 1887, p. 40, § 15.]

Jurisdiction of mayor.

SEC. 157. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty, and he shall have such jurisdiction as may be vested in him by ordinance over all places within two miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof. [S. L. 1877, p. 40, § 16.]

Vacancy in office of mayor—New election.

SEC. 158. When any vacancy shall happen in the office of mayor, by death, resignation, removal from the city, removal from office, refusal to qualify or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, until such vacancy be filled, or such disability be removed, or in case of temporary absence until the mayor shall return, and during the time he shall so act, he shall receive the same compensation the mayor is entitled to, and in case of such vacancy, other than temporary absence or disability, the person exercising the office of mayor shall cause a new election to be held, giving ten days notice thereof by proclamation. [S. L. 1877, p. 40, § 17.]

Mayor may remit fines and grant pardons.

SEC. 159. The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinances of the city. [S. L. 1877, p. 40, § 18.]

General powers of mayor and council.

SEC. 160. The mayor and council of said city shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances not repugnant to the laws of this territory, and such as it shall deem expedient for the good government of the city, the preservation of peace and good order, the suppression of vice and immorality, the benefit of trade, and the health of the inhabitants thereof, and such other rules, ordinances and regulations as may be necessary to carry such power into effect. [S. L. 1877, p. 40, § 19.]

Enumeration of specific corporate powers.

SEC. 161. Said city, in its corporate capacity, is authorized and empowered to enact ordinances for the following purposes, in addition to the other powers granted by this chapter:

Levy and collection of taxes.

First—To levy and collect taxes for general revenue purposes not exceeding six mills on the dollar in any one year on all real, personal and mixed property within the limits of said city, taxable under the laws of the territory. And the assessment, levy and collection of all taxes shall be made as may be provided by ordinance; and for the purpose of compelling payment of taxes the said city shall have power to enforce the same by distress and sale of personal property of the person assessed, except such as is exempt from taxation, and in such case the tax list shall be a sufficient warrant for such distress, and every tax levied by said city and due upon personal property, is hereby made a lien upon the real property of the owners thereof, and every tax levied and due upon real property is hereby made a lien upon the property assessed from and after the date of the levy of such tax, and the city collector of taxes is empowered to sell lands upon which there may be a lien for taxes, and convey the same to the purchaser in manner as may be provided by ordinance, and said city may by ordinance provide for attaching a penalty of ten per centum to all delinquent taxes;

Opening and improving streets—Constructing sewers.

Second—To open and improve streets, avenues and alleys, make sidewalks and build bridges, culverts and sewers within said city, and for the purpose of paying for the same, shall have power to make assessments in the following manner, to-wit:

General assessment for improving streets.

1. For opening, widening and grading all streets and avenues, and for building bridges and culverts, and for foot walks across streets, the assessment shall be made on all real and personal estate within the corporate limits of the city, not exceeding three mills on the dollar for these purposes in any one year; and such assessment and the levy of such tax, may be made at the time the regular annual tax is levied for other purposes.

Assessment for sidewalks.

2. For making and repairing sidewalks the assessment shall be made on all lots and pieces of ground abutting on the improvements, according to the front foot thereof.

Special assessment for improving streets and constructing sewers.

3. For paving, macadamizing, curbing, and guttering all streets and avenues, and excavating, grading and filling for the same, and for all improvements of the squares or areas formed by the crossing of streets, and for the construction of sewers, the assessment shall be made on all lots and pieces of ground to the center of the block, extending along the street or avenue the distance improved or to be improved, according to the assessed value of the lots or pieces of ground, without regard to the buildings or improvements thereon; which value shall be ascertained by three disinterested appraisers, appointed by the mayor and council; it shall be the duty of said appraisers, within a reasonable time after being notified of their appointment, to proceed to appraise such lots and pieces of ground as may be designated by the council, after having taken and subscribed an oath to make a true and impartial appraisement, which appraisement shall be returned to the city council at its first meeting after the same shall have been completed; when said appraisement is returned, the mayor and council shall appoint a time for holding a special session, on some day to be fixed by them, to hear any complaint that may be made as to the valuation of any lot or piece of ground appraised as aforesaid, a notice of which special session shall be given by the mayor in the official paper of the city, and said mayor and council, at said special session, may alter the valuation of any lot or piece of ground, if in their opinion the same has been appraised too high or low; the assessments made as herein provided shall be known as "special assessments for improvements," and may be levied and collected at any time during the year, and shall be in addition to the taxes for general revenue purposes. For the purpose of compelling the payment of the "special assessments for improvements" herein mentioned, the city shall possess the same powers, and the proceedings shall be the same, as provided by law for compelling the payment of taxes for general revenue purposes.

Licenses.

Third—To levy and collect taxes on auctioneers, contractors, druggists, hawkers, peddlers, bankers, brokers, pawnbrokers, merchants of all kinds, grocers, confectioners, restaurants, butchers, taverns, public boarding houses, dram shops, saloons, liquor sellers, billiard tables, bowling alleys and other gaming tables, drays, hacks, carriages, omnibuses, carts, wagons and other vehicles used in the city for pay, lumber dealers, furniture dealers, saddle or harness dealers, stationers, jewelers, and livery stable keepers, real estate agents, express companies or agencies, life or fire insurance companies or agencies, telegraph companies or agencies, shows, theatres, and all kinds of exhibitions for pay, and regulate the same by ordinance; *Provided, however*, That all scientific and literary lectures or entertainments shall be exempt from such taxation, as well also as concerts and musical or other entertainments given exclusively by citizens of the city;

Control of gaming and immorality.

Fourth—To restrain, prohibit and suppress tippling shops, billiard tables, bowling alleys, houses of prostitution and other disorderly houses and practices, games and gambling houses, desecrations of the Sabbath day, commonly called Sunday, and all kinds of public indecencies;

Quarantine regulations.

Fifth—To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose and enforce the same within two miles of the city;

Hospitals, poor-houses, etc.

Sixth—To erect, establish and regulate hospitals, work-houses and poor-houses, and provide for the government and support of the same;

Public health and water supply.

Seventh—To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water;

Police.

Eighth—To establish, regulate and support night-watch and police, and define the powers and duties of the same;

Street lighting and street railways.

Ninth—To provide for and regulate the lighting of the streets, and the erection of lamp-posts, and to permit and regulate the running of horse railway cars, or cars propelled by dummy engines, the laying down of tracks for the same, the transportation of passengers thereon, and the form of rail to be used, and to grant the right of way through the streets and avenues of said city, to any person or persons, company or corporation, for the purposes herein mentioned;

City buildings.

Tenth—To provide for the erection and government of all necessary buildings for the use of the city;

Elections.

Eleventh—To appoint judges of all elections provided by ordinance and this chapter, for the election of city officers, and prescribing the manner of conducting the same, and the returns thereof, and for deciding contested elections, and for holding special elections for any purpose herein provided;

Control of police—Fines.

Twelfth—To regulate the police of the city, and to impose fines, forfeitures and penalties for the breach of any ordinance, and also for the recovery and collection of he same, and in default of payment, to provide for confinement in the city prison or to hard labor in the city;

Bonds of officers.

Thirteenth—To require all officers and servants, elected or appointed, to give bonds and security for the faithful performance of their duties;

Granting franchise to gas company.

Fourteenth—To make contracts with, and authorize any person, company or association to erect gas works in said city, and give such person, company or association the exclusive privilege of furnishing gas to light the streets, lanes and alleys of said city for any length of time, not exceeding ten years;

Public wells.

Fifteenth—To establish make and regulate public wells, cisterns, reservoirs, aqueducts, and to provide for filling the same;

Control of animals running at large—Dog tax.

Sixteenth—To regulate the running at large of cattle, horses, hogs, mules, sheep, goats, dogs, and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition and the expense of impounding and keeping the same and of such sale; to regulate and provide for taxing the owners of dogs found at large contrary to any ordinance regulating the same; and provide for the extermination of all such dogs for which the tax shall not be paid;

Pounds.

Seventeenth—To provide for the erection of all needful pens, pounds and buildings for the use of the city, within or without the city limits, to appoint and compensate keepers thereof, and to establish and enforce rules governing the same;

Fire regulations.

Eighteenth—To regulate the construction of, and order the suppression and cleaning of fire-places, chimneys, stoves, stove-pipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business, which may be dangerous in causing or promoting fires, and to prescribe limits within which dangerous, obnoxious or offensive business may be carried on;

Fire limits and building regulations.

Nineteenth—To prescribe limits within which no building shall be constructed except of stone or brick or other incombustible material, with fire-proof roof, and to impose a penalty for the violation of such ordinance, and to provide the thickness, strength and manner of constructing stone, brick and other buildings within the fire limits of said city and construction of fire escapes therein, and to provide for the proper enforcement of the same by the imposition of a penalty for the violation of any such provisions made by said city, and by abolishing any unauthorized work and declaring the same to be a nuisance, and providing for its abatement;

Fire companies and apparatus.

Twentieth - To procure fire-engines, hooks, ladders, buckets and other apparatus, and to organize fire-engine, hook and ladder and bucket companies, and to prescribe rules of duty and the government thereof;

Regulating railways--Street obstructions.

Twenty-first - To regulate depots, depot grounds and places for storing freight and goods, and to provide for and regulate the passage of railways through the streets and public grounds of the city; to regulate the crossings of railway tracks, and to provide precautions and prescribe rules regulating the same; and to regulate the running of railway engines, cars and trucks within the limits of said city; and to provide rules relating thereto; and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines; to remove all obstructions from the sidewalks, curbstones, gutters and cross-walks at the expense of the owners or occupiers of the grounds fronting thereon, or at the expense of persons placing them there; and to regulate the planting and protection of shade trees in streets; the building of bulkheads, cellar and casement-ways, stair-ways, rail-ways, window and door-ways, awnings, butchering posts and rails, lamp-posts, awning-posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks of said city;

Public Safety.

Twenty-second - To prevent and restrain riots, routs, noises, disturbances or disorderly assemblies on any street, house or place in the city; to regulate, punish and prevent the discharge of fire-arms, rockets, powder, fire-works or any other dangerously combustible material in the streets, lots, grounds, alleys or about or in the vicinity of any buildings; to regulate, prevent and punish the carrying of concealed weapons; to arrest, regulate, punish, fine or set at work all vagrants and persons found in said city without visible means of support or some legitimate business;

Control, use and occupancy of streets.

Twenty-third To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys and other city property, and to prevent and punish horse racing, fast driving or riding in the streets, highways, alleys, bridges or places in the city, and all games, practices, or amusements therein, likely to result in damage to any person or property; to regulate, prevent and punish the riding, driving or passing of horses, mules, oxen, cattle or other teams, or any vehicle drawn thereby, over, upon or across sidewalks or along any streets of the city;

General welfare clause—Limitation on penalties.

Twenty-fourth—To make all such ordinances, by-laws, rules, regulations, resolutions, not inconsistent with the laws of the territory, as may be expedient, in addition to the special powers in this section granted, maintaining the peace, good government and welfare of the city and its trade, commerce and manufactures, and to enforce all ordinances, by inflicting penalties for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable, with costs, together with judgment of imprisonment until the amount of said judgment and costs shall be paid;

Appropriating money.

Twenty-fifth—To appropriate money and provide for the payment of the debts and expenses of the city;

Opening and widening streets.

Twenty-sixth—To open, widen or otherwise improve any street, avenue, alley or lane within the limits of the city, and also to create, open and improve any new street, avenue, alley or lane; *Provided*, That all damages sustained by the citizens of the city, or the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance;

Eminent domain.

Twenty-seventh—To open, widen or otherwise improve any street, avenue, lane or alley whenever deemed expedient for the public good, and to take private property for public use or for the purpose of giving the right of way, or other privilege, to any railroad company, or for the purpose of erecting or establishing market houses and market places, or for any other necessary public purpose; *Provided, however*, That in all cases the city shall make the person or persons whose property shall be taken or injured thereby, adequate compensation therefor, to be determined by the assessment of five disinterested householders of the city, who shall be selected and compensated as may be prescribed by ordinance, and who shall, in the discharge of their duties, act under oath faithfully and impartially to make the assessment to them submitted;

Bonds of 1878—Limitation on contracting indebtedness.

Twenty-eighth—To borrow money on the credit of the city, and pledge the credit, revenue and public property of the city for the payment thereof; *Provided, however*, The money shall only be borrowed for the purpose of funding the existing floating indebtedness of such city; *Provided further*, That if bonds are issued under this sub-division they shall not run for a term exceeding ten years, and shall not be sold for less than ninety cents on the dollar, and shall not bear interest at a rate exceeding ten per cent. per annum, payable semi-annually; *Provided further*, That the city council shall levy a sufficient tax each year to pay the interest of the city bonded indebtedness, and to pay the present city bonded indebtedness at maturity, and to pay the interest of the bonds which may be issued under this sub-division, and to redeem one-tenth of the bonds that may be issued each year until the whole amount is paid; all taxes levied and collected under this sub-division shall be paid in cash, and shall be known as city bond fund, and shall only be appropriated for the purpose of paying the bonds and interest, and present floating indebtedness; *Provided hereafter*, That the city authorities shall not create any indebtedness, or expend a greater amount of money in any one year than the amount of taxes collected in such year, inclusive of the city bond fund;

President of the council.

Twenty-ninth—To elect one of their own body, who shall be styled the "president of the council," and who shall preside at all meeting of the council, in the absence of the mayor, and in the absence of the president, to elect one of their own body to occupy his place temporarily, and who shall be styled "acting president of the council," and the president and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council, and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city, as if done by the mayor;

Ordinances, how proved and passed.

Thirtieth—All ordinances of the city shall be passed pursuant to such rules and regulations as the council may provide, and all ordinances of the city may be proved by the certificate of the clerk, under the seal of the city, and when printed or published in book or pamphlet form, and purporting to be published by authority of the city, shall be read and received in all courts and places without further proof;

Publication of financial statement.

Thirty-first—The council shall cause to be published, once in three months, a statement of the financial condition of the city, which statement shall be verified by the oath of the mayor, treasurer and city clerk;

Land for cemetery and other purposes.

Thirty-second—To purchase, hold and pay for, in the manner herein provided, lands outside of the limits of such city, for the purpose of the burial of the dead, and all necessary grounds for hospital grounds, and water works;

Improvement of cemetery grounds.

Thirty-third—To survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds, and the avenues leading thereto, owned by such city; to construct walks therein, rear and protect ornamental shade trees therein, and to provide for paying the expenses thereof;

Conveyance of lots.

Thirty-four—To convey cemetery lots owned by such city, by certificates, signed by the mayor and countersigned by the clerk, under seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots described therein, by number, as laid down on such map or plat, for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the city council, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof;

Cemetery regulations.

Thirty-fifth—To limit the number of lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, any improper adornment thereof, but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots;

Regulation of corporate property beyond city limits.

Thirty-sixth—To pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof and trespassers therein, and to pass rules and ordinances for the protection of lands and ditches used for water purposes, hospitals and pest-houses outside of the city limits, and the officers of such city shall have as full jurisdiction and power in enforcing of such rules and ordinances as though they related to the city itself;

Estimates by engineer—Awarding contracts—Appropriating money, etc.

Thirty-seventh—Before the city council shall make any contract for building bridges, or for any work on streets, or for any other work or improvements, an estimate of the cost thereof, according to classification of material in case of earth excavation, shall be made by the city engineer; and in advertising for bids for any such work the council shall cause the amount of such estimate to be published therewith; the contract shall be let in all instances to the lowest responsible bidder, and after work is performed under contract, no extra compensation shall be allowed by the city; the mayor and council shall have no power to appropriate or issue warrants on the treasury for any money unless the same has been appropriated or ordered by ordinance, in pursuance of some object provided for in this chapter; warrants shall be paid and cancelled as now provided by law: *Provided*, That no ordinance providing for the borrowing of money, levying of taxes, or appropriating money, shall be of any validity unless a majority of all the councilmen elected shall vote for such ordinance, and such vote shall be taken by yeas and nays, and the same shall be entered upon the record of the proceedings of the council; *And provided, further*, That the provisions of this sub-division shall not apply to sums of ten dollars and less; all appropriation ordinances shall be published;

Presentation and verification of claims against city.

Thirty-eighth—All claims against the city must be presented in writing, with a full account of the items, and verified by the oath of the claimant, or his agent, that the same is correct, reasonable and just, and no claim or demand shall be audited or allowed unless presented and verified as provided for in this section; *Provided*, No costs shall be recovered against such city in any action brought against it for any unliquidated claim which has not been presented to the city council to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due. [S. L. 1877, p. 40, § 20. S. L. 1879, ch. 14, § 1, 2, 3 and 4. S. L. 1884, ch. 15, § 2, 3 and 4. S. L. 1886, ch. 19, § 1.]

Disposition of fines.

SEC. 162. All fines and penalties collected arising from a breach of the ordinances of the city shall be paid to the city treasurer. [S. L. 1877, p. 48, § 21.]

Fees of police justices.

SEC. 163. The police justices shall be entitled to such fees as may be established by ordinance; *Provided*, Such fees shall not be greater than those allowed to justices of the peace by the laws of the territory. [S. L. 1877, p. 48, § 22.]

Punishment by fine and imprisonment.

SEC. 164. Any person convicted before a police justice shall be punished by such fine and imprisonment as may be regulated by ordinance; *Provided*, No fine shall be greater than one hundred dollars, and no imprisonment for a longer time than three months. [S. L. 1877, p. 48, § 23.]

Appeal from police justice to district court.

SEC. 165. Appeal from judgment, or sentence in the police court may be taken to the district court by the defendant, by filing in the district court within five days after the judgment is rendered against him, a notice, together with a transcript of the proceedings before the police justice, containing the final judgment against the defendant, certified by such police justice to be a correct transcript of the proceedings before him. The notice shall contain the title of the case, and the grounds upon which the appeal is taken. The defendant shall also at the time of filing said transcript, pay to the clerk of the district court a docket fee of ten dollars for docketing the case. The case shall then stand for trial at the next term of the district court upon the transcript thus filed; *Provided*, No trial, *de novo*, shall be had in the district court. The appeal thus taken shall not operate as a stay of execution, nor shall the defendant be released from custody until he shall execute a bond to the City of Cheyenne in the sum of one hundred dollars, with one or more sufficient sureties, to be approved by the police justice, conditioned that the defendant will perform the judgment of the district court upon such appeal, which bond shall, in all cases, be filed in the district court with the transcript. The district court, if it affirm the judgment of the police justice, shall render a judgment against the defendant and his sureties on the bond, for the amount of the fine, where the judgment below was for a fine, and all costs, including costs of the the district court. If the district court reverses the judgment of the police justice, it shall order that the defendant be discharged, and his sureties on the bond be released from liability. When the judgment of the police justice is affirmed, the clerk of the district court shall make a transcript of such judgment and forward the same to the police justice from whom the appeal was taken, who shall, upon receipt of such transcript, immediately issue an execution thereon against the defendant and his sureties in the bond. The clerk of the district court shall be entitled to a fee of five dollars for making transcript of judgment, to be included as costs in the case. [S. L. 1886. ch, 19, § 6.]

Police justices may punish for contempt.

SEC. 166. Police justices shall have the same power to punish for contempt as justices of the peace have in like cases. [S. L. 1877, p. 49, § 25.]

Marshal's power as chief of police.

SEC. 167. The marshal shall be chief of police, and shall at all times have power to make and order arrests, with proper process, for any offense against the ordinances of the city or laws of the territory, and bring the offender to trial before the proper officer, and to arrest without process in all cases where any such offense shall be committed or attempted in his presence. [S. L. 1877, p. 49, § 26.]

Powers of policemen.

SEC. 168. The policemen of the said city shall have power to arrest all offenders against the laws of the territory or city, by day or by night, in the same manner as the marshal, and keep them in the city prison or other place to prevent their escape until a trial can be had before the proper officer. [S. L. 1877, p. 49, § 27.]

Policemen subject to orders of mayor and marshal.

SEC. 169. The policemen of the city, in the discharge of their duty, shall be subject to the orders of the mayor and marshal only. [S. L. 1877, p. 49, § 28.]

Marshal subject to orders of mayor.

SEC. 170. The marshal, in the discharge of his duty, shall be subject to the orders of the mayor only. [S. L. 1877, p. 49, § 29.]

Duties of officers—Appointment of deputy clerk and treasurer.

SEC. 171. The duties, powers and privileges of all the officers connected with the city government, not herein defined, shall be defined by ordinance; *Provided*, That the city clerk shall have authority, by and with the consent of the mayor and city council, to appoint a deputy clerk, and such deputy when so appointed, shall take and subscribe a like oath of office with his principal, and may perform all the duties of said office in the name of his principal, and his acts shall be valid and have the same force and effect as if done by his principal; *Provided*, *further*, The city clerk shall be responsible on his official bond for the acts of his deputy. The city treasurer may appoint a deputy, for whose official acts he shall be responsible, and such deputy shall take the oath prescribed for the treasurer with such changes as may be necessary, and shall give bond to such treasurer for the faithful performance of all duties required of him, in such sum and manner as said city treasurer may require, and said deputy shall hold his office during the pleasure of the said city treasurer. [S. L. 1884, ch. 15, § 5. S. L. 1886, ch. 1, § 1.]

Compensation of officers.

SEC. 172. The compensation of the several officers of the city shall be fixed by ordinance at the first regular meeting of the city council in January of each year, and shall not be increased or diminished during that year; *Provided*, That the compensation of the mayor shall not exceed five hundred dollars per annum, and that of the councilmen fifty dollars each per annum. [S. L. 1886, ch. 19, § 4.]

Malfeasance of officer—Penalty—Removal of mayor.

SEC. 173. Any officer of the City of Cheyenne, who shall do any act prohibited by this charter, or shall fail to do any act enjoined by this charter, shall, on conviction, be punished by fine and imprisonment, or both, in the descretion of the court; *Provided*, That the mayor may be removed at any time for cause, by a vote of six members of the council. [S. L. 1877, p. 49, § 32.]

Official year—City is legal successor of former municipal government.

SEC. 174. The officers elected under this charter, except those elected to fill vacancies, shall enter upon their official duties on the third Tuesday of January in each year following their respective elections, and officers elected to fill vacancies shall enter upon their respective duties as soon after their election as possible; *Provided*, That the official year of all officers, except the mayor and councilmen, shall commence on such day as may be provided by ordinance. In order that the rights of all parties shall be protected, the municipal corporation and city government hereby created is declared to be the legal successor of the municipal corporation and city government heretofore in existence in said City of Cheyenne, with all the rights, liabilities and immunities that of right now or did appertain to its predecessor, and all acts and proceedings of the board of trustees of the City of Cheyenne, during the year eighteen hundred and seventy-seven, in establishing and constructing water works in said city, are hereby made, constituted and declared to be legal and valid in all respects; all ordinances now in force in the said City of Cheyenne shall remain in full force and effect until repealed or amended. [S. L. 1877, p. 49, § 33; S. L. 1882, ch. 12, § 3.]

CHAPTER 2.

CHEYENNE WATER SUPPLY.

SECTION.
175. Authority to grant exclusive right to maintain water works.
176. Authority to issue bonds for water works.
177. Registration of bonds.
178. Security for payment of bonds.
179. Redemption of bonds.
180. Cancellation of coupons and bonds.
SECTION.
181. When bonds not to be issued.
182 Custody of funds—Bond of treasurer.
183. Protection of water works—Application of water rents.
184. Penal provisions.
185. Water ordinances.

Authority to grant exclusive right to maintain water works.

SEC. 175. The City of Cheyenne in its corporate capacity is hereby authorized and empowered to lease and grant for a term of years to any person or persons or company, the exclusive right to construct and maintain a system of water works to supply said city with water for the extinguishment of fires and the inhabitants thereof with water for domestic, manufacturing and other purposes under such conditions as may be just and proper. [S. L. 1882, ch. 13, § 1.]

Authority to issue bonds for water works.

SEC. 176. The mayor and council of said city, if they deem it to the advantage of said city to own and control the water system of said city, are hereby authorized by vote of the council to issue coupon bonds, which shall be numbered from one upwards, of the said city, of the denomination of five hundred dollars, payable in twenty years from the date of issue, redeemable at the pleasure of said city after five years, bearing interest at a rate not exceeding eight per cent. per annum, payable annually on the first day of January in each year; principal and interest payable in lawful money of the United States, and at such place or places as shall be designated by the council, which said bonds shall be signed by the mayor and countersigned by the clerk and treasurer of said city, and may be sold and disposed of to an amount sufficient to construct and complete such water works as the mayor and council may determine the wants of the city and its inhabitants demand, however, not to exceed the sum of seventy-five thousand dollars; *Provided*, That said bonds shall not be sold for less than ninety-five per centum of their par value, and that no greater amount of said bonds shall be issued than may be found necessary for the construction and completion of said water works. [S. L. 1882, ch. 13, § 2.]

Registration of bonds.

SEC. 177. The city treasurer of said city shall keep a book in which shall be registered all of said bonds, showing the number of the bond, the date of issue, to whom issued, amount, date of redemption and payment of interest, which book shall be open to any and all persons desiring to examine the same during business hours; any person holding any of said bonds may have the same so indorsed on the face of the bond by the city treasurer; that such bonds shall only be transferable by registration on the books of the city treasurer. [S. L. 1882, ch. 13, § 3.]

Security for payment of bonds.

SEC. 178. All of the taxable property of the said city is hereby pledged for the payment of the said bonds, principal and interest, and there shall be annually levied and collected on all the taxable property, real, mixed and personal within said city a sufficient tax to pay the interest on said bonds as the same becomes due, and to redeem said bonds as provided in this chapter, which tax shall be levied and collected in the same manner as other taxes of the said city; *Provided, however*, that said tax shall be paid in cash, and shall be known as the water bond tax, and shall be used for the payment of interest and principal of bonds issued under this chapter and for no other purpose. [S. L. 1882, ch. 13, § 4.]

Redemption of bonds.

SEC. 179. The said city shall, each year from the sixth to the tenth year, both inclusive, after the issue of said bonds redeem at least one twenty-fifth of all the bonds issued; each year from the eleventh to the fifteenth year, both inclusive, after the issue of said bonds, the said city shall redeem at least one-fifteenth of all the bonds issued; each year from the sixteenth to the twentieth years, both inclusive, the said city shall redeem at least one-fifth of all the bonds outstanding at the commencement of the last named period. The bonds shall be redeemed in the order of their issue. [S. L. 1882, ch. 13, § 5.]

Cancellation of coupons and bonds.

SEC. 180. It shall be the duty of the city treasurer as rapidly as the coupons representing the interest on said bonds are paid, to cause the word, "paid," to be cut in the same and as rapidly as the said bonds are paid, shall cause the word "paid" and "cancelled" to be cut in the body of the same. [S. L. 1882, ch. 13, § 6.]

When bonds not to be issued.

SEC. 181. In the event of water works being built by any person, persons or company under contract with the city, under the provisions of section one hundred and seventy-five, it shall be unlawful to issue the bonds or any part thereof, as provided in this chapter. [S. L. 1882, ch. 13, § 7.]

Custody of funds—Bond of treasurer.

SEC. 182. The city treasurer shall be the custodian of all moneys arising from the sale of bonds under this chapter, and he shall give such bond or bonds for the safe keeping and disbursing of the same as shall be provided by the city council. [S. L. 1882, ch. 13, § 8.]

Protection of water works—Application of water rents.

SEC. 183. The city council of the said city is hereby empowered and authorized to make all needful ordinances, rules and regulations for the protection of any water works constructed and maintained under the provisions of this chapter, and of all property connected with such water works, during their construction or maintenance; whether such water works be wholly or in part located in the limits of said city, and the said city is hereby authorized and empowered to make ordinances for the proper management of such water works, and it shall be the duty of the council of the said city to fix water rates and collect water rents from all persons or incorporations using the water from such water works as may be owned and controlled by the said city; which rates shall not be less than the rates now charged by the Denver water company to the citizens of the city of Denver, in the State of Colorado. All water rents collected under the provisions of this chapter, save and except such amount as shall be required to pay the expenses of maintaining, extending and improving such water works, shall become a part of the water bond fund, and shall be applied only to the payment of the principal and interest of the bonds issued under this chapter. [S. L. 1882 ch. 13, § 9.]

Penal provisions.

SEC. 184. If any person or persons shall do any act herein prohibited, or not herein authorized in the issue or redemption of said bonds or coupons or fail to do any act herein required, he or they shall be deemed guilty of felony, and on conviction shall be imprisoned in the territorial penitentiary for a term not exceeding ten years, and not less than one year, and fined in a sum not less than one hundred dollars, and not exceeding ten thousand dollars. [S. L. 1882, ch. 13, § 11.]

Water ordinances.

SEC. 185. The said City of Cheyenne is hereby authorized and empowered to enact all ordinances necessary to carry out the provisions of this chapter. [S. L. 1882, ch. 13, § 13.]

CHAPTER 3.

CHEYENNE FUNDING BONDS.

SECTION.
186. Authority to issue bonds.
187. Registration of bonds.
188. Security for payment of bonds.
189. Redemption of bonds.
SECTION.
190. Cancellation of coupons and bonds.
191. Custody of funds—Bond of treasurer.
192. Application of water rents.
193. Application of surplus from sale of bonds.

Authority to issue bonds.

SEC. 186. The mayor and city council of the City of Cheyenne are hereby authorized, for the purpose of funding the existing floating indebtedness of the city, on account of water works and sewerage, and to extend the present water system in said city, by vote of the city council, to issue coupon bonds of said city which shall be numbered from one upwards, and said bonds shall be of the denomination of five hundred dollars each, payable in twenty-five years from the date of issue, redeemable at the pleasure of said city after five years, and shall bear interest at a rate not exceeding seven per cent. per annum, payable annually on the first day of January, in each year, the principal and interest payable in lawful money of the United States of America, at the office of city treasurer of the said City of Cheyenne, and at such other place or places as shall be designated by the city council of said city. Said bonds shall be signed by the mayor and countersigned by the city clerk and city treasurer of said city, and may be sold and disposed of to an amount sufficient to fund the existing floating indebtedness of said city, on account of water works and sewerage, and to extend the present water system in said city, as the mayor and city council may determine the wants of the city and its inhabitants demand, for the year 1884; not, however, to exceed the sum of sixty-five thousand dollars; *Provided*, that said bonds shall not be sold for less than ninety-five per centum of their par value, and no greater amount of said bonds shall be issued than may be found necessary for the purposes herein specified. [S. L. 1884, ch. 14, § 1.]

Registration of bonds.

SEC. 187. The city treasurer of said city shall keep a book in which shall be registered all of said bonds, showing the number of each bond, the date of issue, to whom issued, amount, date of redemption and payment of interest, which book shall be open to any and all persons desiring to examine the same during business hours. [S. L. 1884, ch. 14, § 2.]

Security for payment of bonds.

SEC. 188. All of the taxable property of said city is hereby pledged for the payment of the said bonds, principal and interest, and there shall be annually levied and collected on all the taxable property, real, personal and mixed, within said city, a sufficient tax to pay the interest on said bonds as the same becomes due, and to redeem said bonds, as provided in this chapter, which tax shall be levied and collected in the same manner as other taxes of said city; *Provided, however*, That said tax shall be paid in cash, and shall be known as the "water and sewerage bond tax," and shall be used for the payment of interest and principal of bonds issued under this chapter and for no other purpose. [S. L. 1884, ch. 14, § 3.]

Redemption of bonds.

SEC. 189. The said City of Cheyenne shall, each year from the sixth to the tenth year, both inclusive, after the issue of said bonds, redeem at least one-twentieth of all the bonds issued; each year from the eleventh to the fifteenth year, both inclusive, after the issue of said bonds, the said city shall redeem at least one-fifteenth of all the bonds outstanding; each year from the sixteenth to the twentieth year, both inclusive, after the issue of said bonds, the said city shall redeem at least one-tenth of all the bonds outstanding; each year from the twenty-first to the twenty-fifth years, both inclusive, the said city shall redeem at least one-fifth of all the bonds outstanding at the commencement of the last named period. The bonds shall be redeemed in the order of their issue. [S. L. 1884, ch. 14, § 4.]

Cancellation of coupons and bonds.

SEC. 190. It shall be the duty of the city treasurer, as rapidly as the coupons representing the interest on said bonds are paid, to cause the word "paid" to be cut in the same, and as rapidly as the said bonds are paid shall cause the word "paid" to be cut in the body of the bond. [S. L. 1884, ch. 14, § 5.]

Custody of funds—Bond of treasurer.

SEC. 191. The city treasurer of the said City of Cheyenne shall be the custodian of all moneys arising from the sale of bonds, under this chapter, and he shall give such bond or bonds for the safe keeping and disbursing of the same as shall be provided by the city council of said City of Cheyenne. [S. L. 1884, ch. 14, § 6.]

Application of water rents.

SEC. 192. All water rents collected in said City of Cheyenne, except such amount as shall be required to pay the expenses of maintaining, extending and improving the water system in said city, shall be applied only to the payment of the principal and interest of the bonds issued under the provisions of this chapter and the principal and interest of bonds issued under the provisions of the preceding chapter. [S. L. 1884, ch. 14, § 7.]

Application of surplus from sale of bonds.

SEC. 193. The mayor and city council of the City of Cheyenne are hereby authorized to apply the sum of fourteen hundred and forty-three dollars and fifty-six cents, being the surplus remaining in the city treasury arising from the sale of bonds issued under and by authority of the preceding sections of this chapter, to the payment of the principal and interest of said bonds, and for no other purpose. [S. L. 1886, ch. 7, § 1.]

CHAPTER 4.

CHEYENNE FILTER BED BONDS.

SECTION.
194. Authority to construct filter beds.
195. Authority to issue bonds.
196. Registration of bonds.
197. Pledge of taxable property.
198. Redemption of bonds.

SECTION.
199. Cancellation of coupons and bonds.
200. Custody of funds—Bond of treasurer.
201. Penal provisions.
202. Ordinances to make law effective.

Authority to construct filter beds.

SEC. 194. The city of Cheyenne, in its corporate capacity, is hereby authorized and empowered to construct and maintain beds for the filtration of the water supply of said city, under such conditions as may be just and proper. [S. L. 1886, ch. 57, § 1.]

Authority to issue bonds.

SEC. 195. The mayor and council of said city are hereby authorized, by vote of the council, to issue coupon bonds of the said city of the denomination of five hundred dollars, which shall be numbered consecutively from one upwards, payable in thirty years from the date of issue, redeemable at the pleasure of said city after ten years, bearing interest at a rate not exceeding seven per cent. per annum, payable annually on the first day of January in each year, principal and interest, payable in lawful money of the United States, and at such place or places as shall be designated by the council, which said bonds shall be signed by the mayor and countersigned by the clerk and the treasurer of said city, and may be sold and disposed of to an amount sufficient to construct and complete such filter beds as the mayor and council may determine the wants of the city and its inhabitants demand, however not to exceed the sum of twenty-five thousand dollars; *Provided*, That said bonds shall not be sold for less than than their par value, and that no greater amount of said bonds shall be issued than may be found necessary for the construction and completion of said filter beds. [S. L. 1886, ch, 57, § 2.]

Registration of bonds.

SEC. 196. The city treasurer of said city shall keep a book in which shall be registered all of said bonds, showing the number of the bond, the date of issue, to whom issued, amount, date of redemption and payment of interest, which book shall be open to all persons desiring to examine the same during business hours. Any person holding any of said bonds may have the same so endorsed on the face of the bond by the city treasurer, that such bond shall only be transferable by registration on the books of the city treasurer. [S. L. 1886, ch. 57, § 3.]

Pledge of taxable property.

SEC. 197. All of the taxable property of the said city is hereby pledged for the payment of said bonds, principal and interest, and there shall be annually levied and collected on all of the taxable property, real, mixed and personal, within said city, a tax sufficient to pay the interest on said bonds as the same becomes due, and to redeem said bonds as provided in this chapter, which tax shall be levied and collected in the same manner as other taxes of the said city; *Provided*, *however*, That said tax shall be paid in cash, and shall be known as the filter bed tax, and shall be used for the payment of interest and principal of bonds issued under this chapter, and for no other purpose. [S. L. 1886, ch. 57, § 4.]

Redemption of bonds.

SEC. 198. The said city shall, each year from the eleventh to the twenty-fifth year, both inclusive, redeem at least two of said bonds, and each year from the twenty-sixth to the thirtieth year, both inclusive, shall redeem such bonds in such amounts as may be deemed advisable until all are paid. Said bonds shall be redeemed in the order of their issue. [S. L. 1886, ch. 57, § 5.]

Cancellation of coupons and bonds.

SEC. 199. It shall be the duty of the city treasurer, as rapidly as the coupons representing the interest on said bonds are paid to cause the word "paid" to be cut in the same, and as rapidly as the said bonds are paid shall cause the words "paid" and "cancelled" to be cut in the body of the same. [S. L. 1886, ch. 57, § 6.]

Custody of funds—Bond of treasurer.

SEC. 200. The city treasurer shall be the custodian of all moneys arising from the sale of bonds under this chapter, and he shall give such bond or bonds for the safe keeping and disbursing of the same as shall be provided by the city council. [S. L. 1886, ch. 57, § 7.]

Penal provisions.

SEC. 201. If any person or persons shall do any act herein prohibited, or not herein authorized in the issue or redemption of said bonds or coupons, or fail to do any act herein required, he or they shall be deemed guilty of felony, and on conviction shall be imprisoned in the territorial penitentiary for a term not exceeding ten years, and not less than one year, and fined in a sum not less than one hundred dollars and not exceeding ten thousand dollars; and *Provided, further*, If any person or persons shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered any bond or coupon issued under and in pursuance of this chapter, or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or shall have or keep in his possession, or conceal with intent to utter, publish or sell any such false, forged, counterfeited or altered bond or coupon with intent to deceive or defraud, or shall knowingly aid or assist in any of the acts aforesaid, every person so offending shall be deemed guilty of a felony, and on conviction shall be imprisoned in the territorial penitentiary for a term not exceeding fifteen years, and not less than one year, and be punished by a fine not exceeding ten thousand dollars. [S. L. 1886, ch. 57, § 8.]

Ordinances to make law effective.

SEC. 202. The said City of Cheyenne is hereby authorized and empowered to enact all ordinances necessary to carry out the provisions of this chapter. [S. L. 2886, ch. 57, § 9.]

CHAPTER 5.

LARAMIE CHARTER.

SECTION.
203. Corporate limits and name.
204. General corporate powers.
205. Powers exercised by mayor and council.
206. City divided into wards.
207. Police justices—Appointment and jurisdiction.
208. Mayor and councilmen—Term of office—Qualifications—Annual elections—Vacancies.
209. Qualifications of electors—Paying poll tax.
210. Regular meetings of council.
211. Duties of mayor—Casting vote.
212. Elective and appointive officers.
213. Mayor to sign orders, drafts and deeds.
214. Approval and veto of mayor.
215. Advisory powers of mayor.
216. Special meetings of council.
217. Officers to exhibit accounts, etc., on mayor's request.
218. Jurisdiction of mayor.
219. Vacancy in office of mayor—New election.
220. Mayor may grant pardons.
221. General corporate powers.
222. Enumeration of specific corporate powers
223. Assessment book and the form thereof.
224. Duties of assessor.
225. Penalty for refusing to list property.
226. Oath of property holder.
227. Oath of assessor.
228. Failure of assessor to perform duties, penalty.

SECTION.
229. Board of equalization.
230. Hearing of grievances.
231. Abstract of assessment roll.
232. Marshal shall collect tax.
233. Penalty for non-payment of taxes.
234. Duty of marshal in distraining goods.
235. Delinquent taxes—Penalty.
236. Final settlement of marshal.
237. Collection of delinquent taxes.
238. Tax sale.
239. Style of ordinances.
240. Clerk may administer oath to claimant.
241. Disposition of fines and penalties.
242. Fees of police justices.
343. Punishment by fine and imprisonment.
244. Appeals from police courts.
245. Contempt in police court.
246. Marshal's power as chief of police.
247. Powers of policemen.
248. Policemen subject to orders of mayor and marshal.
249. Marshal subject to orders of mayor.
250. Duties of officers—Deputy clerk.
251. Compensation of officers.
252. Misbehavior of officers—Removal of mayor.
253. City is successor to former municipal government.
254. What lands subject to municipal tax.
255. Vested rights preserved.

Corporate limits and name.

SEC. 203. All that portion of the County of Albany, in the Territory of Wyoming, described by legal sub-divisions, according to the government survey thereof, as follows, to-wit: The south half of section twenty-six, the south half of section twenty-seven, the south half of section twenty-eight and the south half of section twenty-nine, and all of sections thirty-two, thirty-three, thirty-four and thirty-five, all being in township numbered sixteen north, of range numbered seventy-three west, of the sixth principal meridian; and also the north half of section two, the north half of section three, the north half of section four and the north half of section five, all being in township numbered fifteen north, of range numbered seventy-three west, of the sixth principal meridian, be and the same is hereby declared to be a corporation by the name of the City of Laramie. [S. L. 1886, ch. 95, § 1.]

General corporate powers.

SEC. 204. The said City of Laramie is hereby made a body corporate and politic, and invested with all the powers and attributes of a municipal corporation, and shall have power to sue and be sued; to purchase and hold real and personal property for the use of the city; to sell and convey any real or personal property, and make such order respecting the same as may be conducive to the interests of the city; to make all contracts and do all other acts in relation to the property and affairs of the city necessary to the exercise of its corporate or administrative powers; to have and use a corporate seal, and alter the same at pleasure; to exercise such other and further powers as are or may be conferred by law. [S. L. 1884, ch. 57, § 2.]

Powers exercised by mayor and council.

SEC. 205. The powers hereby granted shall be exercised by a mayor and a council. [S. L. 1884, ch. 57, § 3. S. L. 1886, ch. 14, § 1.]

City divided into wards.

SEC. 206. The said city shall be divided in three wards, as follows: All that portion of the city east of the center of the Union Pacific railway track, and north of a line passing along the center of South B street from the railway aforesaid, to the eastern limit of the city, shall constitute the first ward; and all that portion of said city lying south of said line and east of the center of said track shall constitute the second ward; and all that portion of said city lying on the west side of the center of said track shall constitute the third ward. That at the next city election the one councilman elected in said third ward, shall be elected for the term provided by section two hundred and eight, for councilmen elected in the first election thereunder. [S. L. 1886, ch 14, § 2.]

Police justices—Appointment and jurisdiction.

SEC. 207. It shall be the duty of said city council to designate two justices of the peace, residents of said city, who shall be styled police justices, and they shall have concurrent jurisdiction to hear and determine all cases arising under the ordinances of said city, and the practice before such justices in police cases shall conform, as near as may be, to the provisions of the justices' code concerning complaints and continuances, but no change of venue shall be granted in any case. [S. L. 1884, ch. 57, § 5.]

Mayor and councilmen—Term of office—Qualifications—Annual elec io —Vacancies.

SEC. 208. The mayor of said city shall be elected for the term of one year, and shall hold his office until his successor is duly elected and qualified. The first ward and second ward shall be represented by two councilmen each, and the third ward shall be represented by one councilman. The first election under this chapter shall be held on the first Tuesday in May, A. D. 1884, and thereafter the annual election shall be held on the first Tuesday in April of each year. At the first election each ward shall elect one member of the council to serve two years and one member to serve one year, and thereafter one member of the council to serve two years, except that the third ward shall elect one councilman each year. At such annual election the polls in each ward shall be opened at nine o'clock, a. m., and remain open until four o'clock, p. m. No person shall be eligible to office of mayor or councilman who is not a resident freeholder of said city at the time of his election and does not possess all the qualifications required of electors under this charter. Councilmen shall be residents of the wards from which they are elected, and if any councilman shall remove from the ward from which he is elected, his seat shall be declared vacant, and whenever there shall be a vacancy in the office of councilman, a special election shall be ordered by the mayor to fill such office, and he shall give five days notice thereof by proclamation. All vacancies occurring between elections, in any elective or appointive offices, provided for in this chapter, except the offices of mayor and councilmen, shall be filled by appointment by the mayor, by and with the advice and consent of the council. [S. L. 1884, ch. 57, § 6. S. L. 1886, ch. 14, § 3; ch. 95, §. 2.]

Qualifications of electors—Paying poll-tax.

SEC. 209. Every legal voter of this territory, who shall have been a *bona fide* resident of his ward five days and of the city three months next preceding any city election, shall be qualified to vote therein at such election: *Provided*, That no person shall be deemed a qualified elector at any such election who has not paid a poll tax for the year preceding the one in which such election is held, which poll tax, to entitle such person to vote, must have been paid at least twenty days previous to the day of such election: *Provided*, That no person shall be disqualified from voting under this section by reason of not having paid such poll tax, if he or she is not required by law to pay such poll tax. [S. L. 1884, ch. 57, § 7.]

Regular meetings of council.

SEC. 210. Regular meetings of the city council shall be held on the first and third Tuesdays of each month. [S. L. 1884, ch. 57, § 8.]

Duties of mayor—Casting vote.

SEC. 211. The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and this chapter are complied with; the mayor shall commission all officers appointed or elected. [S. L. 1884, ch. 57, § 9.]

Elective and appointive officers.

SEC. 212. At each city election there shall also be elected a mayor, a city treasurer, a city clerk, who shall be ex-officio city assessor, a city attorney and a city marshal, who shall be ex-officio city tax collector, each of whom shall hold his office for the term of one year and until his successor is elected and qualified. The mayor shall appoint, by and with the advice and consent of the council a chief engineer and an assistant engineer of the fire department, a civil engineer, and such policemen as may be required, not exceeding two regular policemen, each of which appointed officers shall hold his office for the term of one year and until his successor is appointed and qualified. When any nomination of the mayor is not confirmed by the council, it shall be his duty to at once send in other names until the council does confirm. All city officers, whether elected or appointed, shall qualify and enter upon the discharge of their respective duties upon the first Tuesday in May immediately following their election. The mayor and council may remove any of the said appointed or elected city officers named in this section, except the mayor, for inefficiency, maladministration of his office, or for any dereliction or violation of duty;

Provided, That no such officer shall be removed as aforesaid, until he shall have been notified of such intended removal, and of the charge or charges preferred against him, which notice shall be served upon him by the mayor or the city clerk, and an opportunity given to him to answer said charge or charges. [S. L. 1886, ch. 95, § 3.]

Mayor to sign orders, drafts and deeds.

SEC. 213. The mayor shall sign all orders and drafts upon the treasury for money, and the city clerk shall attest the same and affix thereto the seal of the city and keep an accurate record thereof, in a book to be provided for that purpose; and all conveyances of real estate by said city shall be signed by the mayor and have attached thereto the official seal of the city and be attested by the city clerk. [S. L. 1884, ch. 57, § 11.]

Approval and veto of mayor.

SEC. 214. The mayor shall have power to sign or veto an ordinance passed by the city council: *Provided*, That an ordinance vetoed by him may be passed over his veto by a vote of two-thirds of the members of the council elected, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance or return the same with his objections, in writing, at the next regular meeting of the council, the same shall become an ordinance without his signature. [S. L. 1884, ch. 57, § 12.]

Advisory powers of mayor.

SEC. 215. He shall, from time to time, communicate to the city council such information, and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city. [S. L. 1884, ch. 57, § 13.]

Special meeting of council.

SEC. 216. The mayor and any two councilmen, or a majority of the councilmen, shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk. [S. L. 1884, ch. 57, § 14.]

Officers to exhibit accounts, etc., on mayor's request.

SEC. 217. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make a report to the council in writing touching any subject or matter he may require pertaining to his office. [S. L. 1884, ch. 57, § 15.]

Jurisdiction of mayor.

SEC. 218. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty, and he shall have such jurisdiction as may be vested in him by ordinance over all places within two miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof. [S. L. 1884, ch. 57, § 16.]

Vacancy in office of mayor—New election.

SEC. 219. When any vacancy shall happen in the office of mayor, by death, resignation, removal from the city, removal from office, refusal to qualify, or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, until such vacancy be filled, or such disability be removed, or in case of temporary absence, until the mayor shall return, and during the time he shall so act, he shall receive the same compensation the mayor is entitled to, and in case of such vacancy, other than a temporary absence or disability, the person exercising the office of mayor shall cause a new election to be held, giving ten days notice thereof by proclamation. [S. L. 1884, ch. 57, § 17.]

Mayor may grant pardons.

SEC. 220. The mayor and council shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinances of the city. [S. L. 1884, ch. 57, § 18.]

General corporate powers.

SEC. 221. The mayor and council of said city shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances not repugnant to the laws of this territory, and such as it shall deem expedient for the good government of the city, the preservation of peace and good order, the suppression of vice and immorality, the benefit of trade, and the health of the inhabitants thereof, and such other rules, ordinances and regulations as may be necessary to carry such power into effect. [S. L. 1884, ch. 57, § 19.]

Enumeration of specific corporate powers.

SEC. 222. Said city, in its corporate capacity, is authorized and empowered to enact ordinances for the following purposes, in addition to the other powers granted by this chapter.

Taxation.

First To levy and collect taxes for general revenue purposes, not exceeding ten mills on the dollar in any one year, on all real, personal and mixed property, within the limits of said city, taxable under the laws of the territory, except as provided in section two hundred and fifty-four, and the assessment, levy and collection of taxes shall be made as may be provided by ordinance; and for the purpose of compelling payment of taxes, the city shall have power to enforce the same by distress and sale of personal property of the person assessed, except such as is exempt from taxation, and in such case the tax list shall be a sufficient warrant for such distress; and every tax levied by said city and due upon personal property is hereby made a lien upon the real property of the owners thereof, and every tax levied and due upon real property is hereby made a lien upon the property assessed from and after the date of the levy of such tax, and the city marshal and ex-officio collector of taxes is empowered to sell lands upon which there may be a lien for taxes, and convey the same to the purchaser in manner as may be provided by ordinance, and said city may, by ordinance, provide for attaching a penalty of twenty-five per centum to all delinquent taxes; *Provided*, That until an ordinance be enacted for the assessment, levy and collection of city taxes under this subdivision, the council may, by resolution which shall be approved by the mayor, provide for the levy thereof; and all of the provisions of the next succeeding sixteen sections shall apply to the said City of Laramie, and are hereby continued in force, until the enactment of an ordinance providing for the assessment, levy and collection of taxes in and for said city, by the mayor and council; and any duty enjoined or power conferred in said sections upon the board of trustees of the town of Laramie City, or the marshal, assessor and treasurer thereof, shall be performed and exercised by the mayor, council, marshal, clerk and ex-officio assessor, treasurer, or other proper officer of the City of Laramie, until the enactment of such ordinance;

Opening and improving streets.

Second— To open and improve streets, avenues and alleys, make sidewalks and build bridges, culverts and sewers within the city, and for the purpose of paying for the same, shall have power to make assessments in the following manner, to-wit:

General assessment for improving streets.

1. For opening, widening and grading all streets and avenues, and for building bridges, culverts and sewers, and for foot-walks across streets; the assessments shall be made on all real and personal estate within the corporate

limits of the city, not exceeding two mills on the dollar for these purposes in any one year; and such assessment, and the levy of such tax, may be made at the time the regular annual tax is levied for other purposes.

Assessment for sidewalks.

2. For making and repairing sidewalks, the assessment shall be made on all lots and pieces of ground abutting on the improvements, according to the front foot thereof.

Special assessment for improving streets.

3. For paving, macadamizing, curbing and guttering all streets and avenues, and excavating, grading and filling for the same, and for all improvements of the squares, or areas formed by the crossings of streets, the assessments shall be made on all lots and pieces of ground to the center of the block, extending along the street or avenue the distance improved or to be improved, according to the assessed value of the lots or pieces of ground, without regard to the buildings or improvements thereon; which value shall be ascertained by three disinterested appraisers, appointed by the mayor and council; it shall be the duty of said appraisers, within a reasonable time after being notified of their appointment, to proceed to appraise such lots and pieces of ground as may be designated by the council, after having taken and subscribed an oath to make a true and impartial appraisement, which appraisement shall be returned to the city council at its first meeting after the same shall have been completed; when said appraisement is returned, the mayor and council shall appoint a time for holding a special session on some day to be fixed by them, to hear any complaint that may be made as to the valuation of any lot or piece of ground appraised as aforesaid, a notice of which special session shall be given by the mayor in the official paper of the city, and said mayor and council, at said special session, may alter the valuation of any lot or piece of ground, if, in their opinion, the same has been appraised too high or low; the assessment made as herein provided, shall be known as "special assessments for improvements," and may be levied and collected at any time during the year, and shall be in addition to the taxes for general revenue purposes. For the purpose of compelling the payment of the "special assessments for improvements" herein mentioned, the city shall possess the same powers, and the proceedings shall be the same as provided by law for compelling the payment of taxes for general revenue purposes;

Licenses.

Third—To levy and collect taxes on auctioneers, contractors, druggists, hawkers, peddlers, bankers, brokers, pawnbrokers, merchants of all kinds, grocers, confectioners, restaurants, butchers, taverns, public boarding houses, dram shops, saloons, liquor sellers, billiard tables, bowling alleys and other gaming tables, drays, hacks, carriages, omnibuses, carts, wagons and other vehicles used in the city for pay, lumber dealers, furniture dealers, saddle or harness dealers, stationers, jewelers, and livery stable keepers, real estate agents, express companies or agencies, life or fire insurance companies or agencies, telegraph companies or agencies, shows, theaters and all kinds of exhibitions for pay, and regulate the same by ordinance; *Provided*, *however*, That all scientific and literary lectures or entertainments shall be exempt from such taxation, as well also as concerts and musical or other entertainments given exclusively by citizens of the city;

Control of gaming and immorality.

Fourth—To restrain, prohibit and suppress tippling shops, and all places where intoxicating liquor is sold, billiard tables, bowling alleys, houses of prostitution and other disorderly houses and practices, games and gambling houses, desecrations of the Sabbath day, commonly called Sunday, and all kinds of public indecencies;

Quarantine regulations.

Fifth—To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose, and enforce the same within two miles of the city;

Hospitals, poor-houses, etc.

Sixth—To erect, establish and regulate hospitals, work-houses and poor-houses, and provide for the government and support of the same;

Public health and water supply.

Seventh—To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water, and to establish a system of sewerage;

Police.

Eighth—To establish, regulate and support night-watch and police, and define the powers and duties of the same;

Street lighting and street railways.

Ninth—To provide for and regulate the lighting of the streets and the erection of lamp posts, and to permit and regulate the running of horse railway cars, or cars propelled by dummy engines, the laying down of tracks for the same, the transportation of passengers thereon and the form of rails to be used, and to grant the right of way through the streets and avenues of said city, to any person or persons, company or corporation, for the purposes herein mentioned;

Public buildings.

Tenth—To provide for the erection and government of all necessary buildings for the use of the city;

Elections.

Eleventh—To appoint judges of all elections provided by ordinance and by this chapter, for the election of city officers, to prescribe the manner of conducting the same, and the returns thereof, and for deciding contested elections, and for holding special elections for any purpose in this chapter or by law provided; and to provide for the registration of the qualified electors of said city;

Control of police—Fines and penalties.

Twelfth—To regulate the police of the city, and to impose fines, forfeitures and penalties for the breach of any ordinances, and also for the recovery and collection of the same, and in default of payment, to provide for confinement in the city prison or county jail, or to hard labor in the city;

Bonds of officers.

Thirteenth—To require all officers and servants, elected or appointed, to give bonds and security for the faithful performance of their duties;

Authority to contract with light and steam heating companies.

Fourteenth—To make contracts with and authorize any person, company, association or corporation to erect gas works, or electric light works, or steam heating works and apparatus, and to give such person, company, association or corporation the exclusive privilege of furnishing gas or electric lights to light the streets, lanes and alleys of said city for any length of time not exceeding ten years, and to grant to the same the right of way for laying or erecting pipes, mains, wires or electrical apparatus;

Public wells.

Fifteenth—To establish, make and regulate public wells, cisterns, reservoirs, acqueducts, and to provide for filling the same;

Control of animals running at large—Dog tax.

Sixteenth—To regulate the running at large of cattle, horses, hogs, mules, sheep, goats, dogs and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition, and the expense of impounding and keeping the same, and of such sale; to regulate and provide for taxing the owners of dogs found at large contrary to any ordinance regulating the same, and to provide for the extermination of all such dogs for which the tax shall not be paid;

Pounds.

Seventeenth—To provide for the erection of all needful pens, pounds and buildings for the use of the city, within or without the city limits, to appoint and compensate keepers thereof, and to establish and enforce rules governing the same;

Fire regulations.

Eighteenth—To regulate the construction of and order the suppression and cleaning of fire places, chimneys, stoves, stove-pipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactury or business, which may be dangerous in causing or promoting fires, and to prescribe limits within which dangerous, obnoxious or offensive business may be carried on;

Fire limits and building regulations.

Nineteenth—To prescribe limits within which no building shall be constructed except of stone or brick or other incombustible material, with fireproof roof, and to impose a penalty for the violation of such ordinance; and to provide the thickness, strength and manner of constructing stone, brick and other buildings within the fire limits of said city, and construction of fire escapes therein, and to provide for the proper enforcement of the same by the imposition of a penalty for the violation of any such provisions made by said city, and by abolishing any unauthorized work and declaring the same to be a nuisance, and providing for its abatement;

Fire companies and apparatus.

Twentieth—To procure fire engines, hooks, ladders, buckets and other apparatus, and to organize fire engine, hook and ladder and bucket companies, and a fire department, and to prescribe rules of duty and the government thereof;

Railway regulations—Obstructions to streets.

Twenty-first—To regulate depots, depot grounds and places for storing freight and goods, and to provide for and regulate the passage of railways through the streets and public grounds of the city; to regulate the crossings of railway tracks, and to provide precautions and prescribe rules regulating the same; and to regulate the running of railway engines, cars and trucks within the limits of said city; and to provide rules relating thereto, and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines; to remove all obstructions from the sidewalks, curbstones, gutters and cross-walks, at the expense of the owners or occupiers of the grounds fronting thereon, or at the expense of the person placing them there; and to regulate the planting and protection of shade trees in streets; the building of bulkheads, cellar and casementways, stairways, railways, window and doorways, awnings, butchering posts and rails, lamp posts, awning posts and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks of said city;

Public safety.

Twenty-second—To prevent and restrain riots, routs, noises, disturbances or disorderly assemblies on any street, house or place in the city; to regulate, punish and prevent the discharge of fire-arms, rockets, powder, fire-works or any other dangerously combustible material, in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent and punish the carrying of concealed weapons; to arrest, regulate, punish, fine or set to work all vagrants and persons found in said city without visible means of support or some legitimate business;

Control, use and occupancy of streets.

Twenty-third—To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys and other city property, and to prevent and punish horse-racing, fast driving or riding in the streets, highways, alleys, bridges or places in the city, and all games, practices or amusements therein likely to result in damage to any person or property; to regulate, prevent and punish the riding, driving or passing of horses, mules, oxen, cattle or other teams, or any vehicle drawn thereby, over, upon or across sidewalks or along any streets of the city;

General welfare clause—Limitation on penalties.

Twenty-fourth—To make all such ordinances, by-laws, rules, regulations, resolutions, not inconsistent with the laws of the territory, as may be expedient, in addition to the special powers in this section granted, maintaining the peace, good government and welfare of the city and its trade, commerce and manufactures, and to enforce all ordinances, by inflicting penalties for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable, with costs, together with judgment of imprisonment until the amount of said judgment shall be paid;

Appropriation of money.

Twenty-fifth—To appropriate money and provide for the payment of the debts and expenses of the city;

Opening and widening streets.

Twenty-sixth—To open, widen or otherwise improve any street, avenue, alley or lane within the limits of the city, and to create, open and improve any new street, avenue, alley or lane, and all damages sustained thereby by any person or persons, corporation or corporations, shall be ascertained in such manner as shall be provided by ordinance; and whenever any person or persons who may be the owner or owners of any whole or fractional block in said city, which is occupied wholly for residence purposes, shall petition the council to vacate any alley or lane laid out, platted, surveyed or established through said block, or fractional block, or any portions thereof, such alley or lane may, in the discretion of the council, be vacated and abandoned by resolution;

Eminent domain.

Twenty-seventh—To open, widen, or otherwise improve any street, avenue, lane or alley, whenever deemed expedient for the public good, and to take private property for public use, or for the purpose of giving the right of way or other privileges to any railroad company, or for the purpose of erecting or establishing market houses and market places, or for any other necessary public purpose; *Provided, however*, That in all cases the city shall make the person or persons whose property shall be taken or injured thereby, adequate compensation therefor, to be determined by the assessment of five disinterested house-holders of the city, who shall be selected and compensated as may be prescribed by ordinance, and who shall, in the discharge of their duties, act under oath faithfully and impartially to make the assessment to them submitted;

Bonds—Limitation on contracting indebtedness.

Twenty-eighth—To borrow money on the credit of the city, and pledge the credit, revenue and public property of the city for the payment thereof: *Provided, however*, The money shall only be borrowed for the purpose of funding any floating indebtedness of such city: *Provided, further*, That if bonds are issued under this sub-division they shall not run for a term exceeding ten years, and shall not be sold for less than ninety cents on the dollar, and shall not bear interest at a rate exceeding eight per cent. per annum, payable semi-annually: *Provided further*, That the city council shall levy a sufficient tax each year to pay the interest of any city bonded indebtedness, and to pay the interest of the bonds which may be issued under this sub-division, and to redeem one-tenth of the bonds that may be issued each year until the whole amount is paid; all taxes levied and collected under this sub-division shall be paid in cash, and shall be known as city bond fund, and shall only be appropriated for the purpose of paying the bonds and interest, and present floating indebtedness: *Provided, hereafter*, That the city authorities shall not create any indebtedness, or expend a greater amount of money in any one year than the amount of taxes collected in such year, inclusive of the city bond fund;

President of the council.

Twenty-ninth—To elect one of their own body, who shall be styled the "president of the council," and who shall preside at all meetings of the council, in the absence of the mayor, and in the absence of the president, to elect one of their own body to occupy his place temporarily, and who shall be styled "acting president of the council," and the president and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council, and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city, as if done by the mayor;

Ordinances, how passed and proved.

Thirtieth—All ordinances of the city shall be passed pursuant to such rules and regulations as the council may provide, and all ordinances of the city may be proved by the certificate of the clerk, under the seal of the city, and when printed or published in book or pamphlet form, and purporting to be published by authority of the city, shall be read and received in all courts and places without further proof;

Publication of financial statement.

Thirty-first—The council shall cause to be published, once in six months, a statement of the financial condition of the city, which statement shall be verified by the oath of the mayor, treasurer and city clerk;

Owning lands outside of city.

Thirty-second—To purchase, hold and pay for, in the manner herein provided, lands outside of the limits of such city, for the purpose of the burial of the dead, and all necessary grounds for hospital grounds, water works, springs, sources of water supply and lands through which any ditches, conduits, aqueducts or water mains or pipes may be constructed therefrom to the said city, and all necessary grounds, lands and premises for sewer construction and extension;

Cemeteries.

Thirty-third—To survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds, and the avenues leading thereto, owned by such city; to construct walks therein, rear and protect ornamental shade trees therein, and to provide for paying the expenses thereof;

Conveyance of cemetery lots.

Thirty-fourth—To convey cemetery lots owned by such city, by certificate, signed by the mayor and countersigned by the clerk, under the seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots described therein, by number, as laid down on such map or plat, for the purpose of interment, and such certificate shall vest in the proprietor, his or her assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the city council, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof;

Cemetery rules.

Thirty-fifth—To limit the number of cemetery lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, any improper adornment thereof, but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots;

Regulation of property outside of city limits.

Thirty-sixth—To pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof and trespassers therein, and to pass rules and ordinances for the protection of lands, springs, sources of water supply, ditches, conduits, aqueducts, water mains or pipes for water purposes, hospitals, pest houses, and all other property under the control of the city and outside of its limits;

Estimates by engineer—Awarding contracts—Appropriating money, etc.

Thirty-seventh—Before the city council shall make any contract for building bridges, or for any work on streets, or for any other work or improvements, an estimate of the cost thereof shall be made by the city engineer, and the contract therefor shall be let in all instances to the lowest responsible bidder, and after work has been performed under contract, no extra compensation therefor shall be allowed by the city; and the mayor and council shall have no power to appropriate or issue warrants on the treasurer for any money unless the same has been appropriated or ordered by ordinance, in pursuance of some object provided for in this chapter, and all warrants shall be paid and cancelled in the manner provided by law for the payment and cancellation of county warrants of Albany County; *Provided*, That no ordinance providing for the borrowing of money, levying of taxes, or appropriating money shall be of any validity unless a majority of all the councilmen elected shall vote for such ordinance, and such vote shall be taken by yeas and nays, and the same shall be entered upon the record of the proceedings of the council; and *Provided further*, That the provisions of this sub-division shall not apply to sums of fifty dollars and less; and ordinances appropriating money or levying taxes need not be published;

Presentation and verification of claims against city.

Thirty-eighth—All claims against the city must be presented in writing, with a full account of the items, and verified by the oath of the claimant or his agent, that the same is correct, reasonable and just, and that the same or any part thereof has not been paid by the city or by any individual, and no claim shall be audited or allowed unless presented and verified as provided for in this section; *Provided*, No costs shall be recorded against such city in any action brought against it for any unliquidated claim which has not been presented to the city council to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due;

Liquor licenses.

Thirty-ninth—The city council of said city shall have the power to license, control and regulate the sale of spirituous and intoxicating liquors within said city, in addition to the county license therefor, and for that purpose shall collect a license fee or tax from each dealer in spirituous or intoxicating liquors of not less than one hundred dollars nor more than five hundred dollars, payable annually in advance, and the council shall annually fix the amount to be paid for such licenses. Each license shall be issued for one year and no less period, and shall clearly state upon its face such conditions as the council may impose upon issuing the same, but such license shall be transferable by consent of the council. [S. L. 1884, ch. 57, § 20. S. L. 1886, ch. 14, § 4; ch. 95, §§ 4, 5, 6 and 7.]

Assessment book, and the form thereof.

SEC. 223. On the first Monday in May in each year, the board of trustees of Laramie City, shall furnish the assessor of said Laramie City with suitable books in duplicate, properly ruled and headed in which to enter the following items:

First—The name of the individual corporation, company, society, partnership or firm, to whom any property shall be taxable;

Second—His or their lands by township, range, section, or part of a section, and where such part is not a legal division or sub-division some other description sufficient to identify it and his or their city lots or parts of lots and their proper description by number and block or otherwise according to the system of numbering in the city;

Third—His or their personal property by the following particulars: Amount of capital employed in manufactures, amount of capital employed in merchandise, number and value of horses, number and value of mules and asses, number and value of sheep and goats, number and value of neat cattle, number and value of carriages and vehicles of every description, amount of money and credits, amount of all personal or other property not herein enumerated; other property not herein enumerated belonging to any corporation or company, whether incorporated in this territory or not, amount of clocks, watches, jewelry, gold or silver plate, number and value of musical instruments, amount of taxable household furniture, amount of farming utensils and mechanics' tools, amount in stock or shares in any corporation or company, amount of all other property not enumerated, and a column for remarks, and shall also provide the assessor with all necessary books and blanks required to carry out the provisions of this chapter. [S. L. 1882, ch. 62, § 2. S. L. 1886. ch. 95, § 4.]

Duties of assessors.

SEC. 224. The assessor shall enter upon the discharge of the duties of his office as soon as furnished with the assessment roll by the city trustees as hereinbefore provided, and shall, with the assistance of each person required by law to list property for himself or for another, enter in the books furnished him for that purpose all kinds of property specified in the preceding section, or that may be subject to taxation, entering the names of the persons assessed in alphabetical order so far as practicable by allotting to each letter its requisite number of pages in each of said books. [S. L. 1882, ch. 62, § 33. S. L. 1886, ch. 95, § 4.]

Penalty for refusing to list property.

SEC. 225. It shall be the duty of the city assessor to list each and every person in the city, and to assess all property real and personal therein as required in this chapter, and any person who shall refuse to assist in making out a list of his property or of any property of which he is required by law to assist in listing, or refuse to make the oath or affirmation required by this chapter, shall forfeit the sum of two hundred dollars to be recovered in the name of the city, by an action brought in the district court for Albany County by the trustees of the city, and when any person refuses to make out a list of his property which by law he is required to do, the assessor shall assess such person, according to the best information he can get as to the amount of such taxable property which such person has. [S. L. 1882, ch. 62, § 4. S. L. 1886, ch. 95, § 4.]

Oath of property holder.

SEC. 226. The assessor is hereby required to administer the following oath or affirmation to each person assessed: "You do solemnly swear that you have given in a full and correct inventory of all taxable property owned by you, and all property held by you as agent, guardian or otherwise, which you are required by law to list, to the best of your knowledge, so help you God." And in case any one refuses to take said oath or affirmation, the assessor shall note the fact in the column of remarks opposite to such person's name, and should it afterwards appear that such person has not given in a full list of his property or that under his control any property so omitted shall be entered on the book at double the ordinary assessed value of like property and shall be taxed accordingly. If such affidavit is made by any person who is a non-resident of such town of Laramie City the same may be administered by any person authorized to administer an oath in the place where the same is made. [S. L. 1882, ch. 62, § 5. S. L. 1886, ch. 95, § 4.]

Oath of assessor.

SEC. 227. The assessor shall take and subscribe an oath to be certified by the officer administering it and attached to the assessment roll which shall be in substance as follows: I, A—— B——, of Laramie City, solemnly swear that the value of all personal property, money and credits of which a statement has been made and verified by the oath of the person required to list the same is truly returned as set forth in such statement. That in every case where I have been required to ascertain the amount or value of the property of any person, corporation or company, I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that as I verily believe the full value thereof is set forth in the annexed return; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property, which he was required by law to list nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation. [S. L. 1882, ch. 62, § 6. S. L. 1886, ch. 95, § 4.]

Failure of assessor to perform duties, Penalty.

SEC. 228. If any assessor shall fail or neglect to perform any of the duties required of him by this chapter, at the time and in the manner herein specified he shall be liable to a fine of not less than twenty dollars, nor more than five hundred dollars to be recovered in an action brought in the district court of Albany County by the city trustees. The judgment shall be against him and his sureties on his official bond. [S. L. 1882, ch. 62, § 7. S. L. 1886, ch. 95, § 4.]

Board of equalization.

SEC. 229. The assessor shall make returns of his assessment roll to such board of trustees on or before the second Monday in June of each year and the board of trustees and assessor of the city shall constitute a board for the equalization of the assessment of the several persons in the city substantially in the same manner as is required of the county board of equalization of Albany County; and they shall hold a special meeting at the office of the city clerk in Laramie City within five days after the return of the assessment roll in each year, and shall have the right to adjourn such meeting from day to day for not more than three days, and at such meeting they shall add to said assessment roll any taxable property in the city not included in the assessment as returned by the assessor, and shall assess the value thereof and shall hear and determine the complaints of all persons feeling aggrieved by the assessment of their property as returned by the assessor, and for the purpose of equalizing the assessment roll may increase, diminish or otherwise alter and correct any assessment; *Provided*, It shall be the duty of the clerk of the board of trustees, to give notice to each person, company or corporation whose assessment has been raised by the board of equalization stating the amount of such raise or increase of assessment as aforesaid. Such notice may be given by personal service or by statement either written or printed, postage prepaid by mail and properly addressed to such person, company or corporation or to the agent or agents or attorney or any one of them, either of whom may appear before the board of equalization at their next regular meeting, and upon evidence satisfactory to the board of equalization that the assessment or any part thereof is unjust or more than the actual cash value of such property so assessed, the board of equalization shall abate such tax in proportion to such unjust erroneous assessment; *Provided*, It is evident to the board of equalization that no part of such claimant's taxable property has been omitted, or undervalued in the original assessment, or by the board of equalization for the year or years for which such claim or claims are made. [S. L. 1882, ch. 62, § 8. S. L. 1886, ch. 95, § 4.]

Hearing of grievances.

SEC. 230. Any person who may feel aggrieved at anything in the assessment of his property may appear before the board of equalization either in person or by agent within the time mentioned in the preceding section and have the same corrected in such manner as to said board shall seem just and equitable, and it shall be the duty of the assessor of the city, when assessing, to give each person assessed a printed notice of the time and place when and where said board of equalization is to meet as heretofore specified. [S. L. 1882, ch. 62, § 9. S. L. 1886, ch. 95, § 4.]

Abstract of assessment roll.

SEC. 231. Immediately after the assessment roll is corrected by the board of equalization, the city clerk is required to make out an abstract thereof, containing the whole number of acres of land listed in the city, and the aggregate value of the same; the total valuation of the city lots, the whole number of horses, and their total value; the whole number of mules and asses, and their total value; the whole number of neat cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the whole number of musical instruments, and their total value; the whole number and value of clocks, watches, jewelry, gold and silver plate; the total amount of capital employed in merchandise; the total amount of capital employed in manufactures; the total amount of taxable household furniture; the total amount of taxable farming utensils and mechanics' tools; total value of stock and shares in any corporation or company; total number and value of carriages and vehicles of every description; total amount of all personal or other property not herein enumerated belonging to corporations or companies; the gross amount of all other property returned not herein enumerated; the total amount of moneys and credits and the total amount of premiums of any and all insurance companies. A copy of which abstract the clerk is directed to transmit forthwith to the board of trustees of the city; but the board of trustees are authorized to diminish or add to the above list and to require such different or further matters to be returned as it deems advisable. [S. L. 1882, ch. 62, § 10. S. L. 1886, ch. 95, § 4.]

Marshal shall collect tax.

SEC. 232. The marshal, on receiving the tax list and warrant, shall proceed immediately to collect the taxes therein levied and the list and warrant thereto attached shall be his authority and justification against any illegality in the proceedings prior to receiving the list. He shall be required to call upon and demand from each taxpayer named in the list the amount of his, her, their or its tax, as therein specified, before the first Monday of September following his receipt of said list, and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the list of former years; the collector shall receipt to each person or corporation for the amount of tax received by him from them, specifying therein each kind of tax and when the same was paid, and shall make the proper entries of such payment on the tax list. [S. L. 1882, ch. 62, § 11. S. L. 1886, ch. 95, § 4.]

Penalty for non-payment of taxes.

SEC. 233. It shall be the duty of every person or corporation subject to taxation at some time before the said first Monday of September as aforesaid to pay his, her, their or its taxes, and if any one neglect or refuse to pay them before said first Monday in September following the levy of the tax, the marshal is directed to, and shall make the same by distress and sale of his, her, their or its personal property, except such as is exempt from taxation, and the tax list alone shall be a sufficient warrant for such distress. [S. L. 1882, ch. 62, § 12. S. L. 1886, ch. 95, § 4.]

Duty of marshal in distraining goods.

SEC. 234. When the marshal distrains goods he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after taking, in the manner constables usually are required to give notice of the sale of personal property under execution, and time of sale shall not be more than ten days from the day of taking, but he may adjourn the sale from time to time, not exceeding three days, and shall adjourn at once when there are no bidders and in case of adjournment he shall put up a notice thereof at the place of sale. [S. L. 1882, ch. 62, § 13. S. L. 1886, ch. 95, § 4.]

Delinquent taxes—Penalty.

SEC. 235. On the first Monday of October in each year the unpaid taxes of that year become delinquent and shall draw interest at the rate of twenty-five per centum per annum until paid or collected by distress and sale, and taxes upon real property are hereby made a perpetual lien thereupon, against all persons or corporations, and taxes from any person or corporations on personal property shall be a lien on any real property owned by such person or corporation. *Provided*, Such real estate was owned by such person or corporation at the time the assessment of the property of such person or corporation was made. [S. L. 1882, ch. 62, § 14. S. L. 1886, ch. 95, § 4.]

Final settlement of marshal.

SEC. 236. On the third Monday of October in each year, the marshal shall make a final settlement with the city treasurer, and shall return to said treasurer a list of all unpaid taxes and the taxes collected, and thereafter all delinquent taxes shall be payable to the city treasurer. [S. L. 1882, ch. 62, § 15. S. L. 1886, ch. 95, § 4.]

Collection of delinquent taxes.

SEC. 237. The city treasurer shall immediately upon the receipt by him of such delinquent tax list proceed to collect all taxes then due to the city and for such purpose shall have the power to collect by distraint and sale in the same manner as the marshal is required to do in this chapter. Said treasurer shall also have the power to sell and convey real property for delinquent taxes, which shall take place at the office of the city clerk, or at the usual place of meeting of the board of trustees, and he shall give notice of such sale once a week for four weeks in a newspaper in Laramie City, the first insertion of which notice shall be at least four weeks before the day of sale, and by a written notice posted on the front door of the building wherein such sale is herein required to take place for four weeks before the sale; such notice shall contain a notification that all lands or real estate on which the taxes of ———————— have not been paid will be sold, and the time and place of such sale with a list of such lands or real estate. Ten per cent. upon the amount of taxes shall be added when lands or real estate are advertised. [S. L. 1882, ch. 62, § 16; S. L. 1886, ch. 95, § 4.]

Tax sale.

SEC. 238. The sale and conveyance of lands and real estate for taxes as provided in this chapter and also the redemption thereof shall conform as far as practicable to the laws of Wyoming (except as herein otherwise provided) providing for the sale, conveyance and redemption of lands and real estate for and on condition of delinquent taxes. [S. L. 1882, ch. 62, § 17; S. L. 1886, ch. 95, § 4.]

Style of ordinances.

SEC. 239. The style of the city ordinances shall be "Be it ordained by the council of the City of Laramie." [S. L. 1884, ch. 57, § 21.]

Clerk may administer oath to claimant.

SEC. 240. The city clerk is authorized to administer oaths to any and all persons having claims against the city, and shall append his jurat to any affidavit or verification of any such claim sworn to before him, but he shall receive no compensation for administering any oath or making any jurat or statement thereof. [S. L. 1884, ch. 57, § 22.]

Disposition of fines and penalties.

SEC. 241. All fines and penalties collected arising from a breach of the ordinances of the city, shall be paid to the city treasurer by the officers collecting the same. [S. L. 1884, ch. 57, § 23.]

Fees of police justices.

SEC. 242. The police justices shall be entitled to such fees as may be established by ordinance; *Provided*, Such fees shall not be greater than those allowed to justices of the peace by the laws of the territory. [S. L. 1884, ch. 57, § 24.]

Punishment by fine and imprisonment.

SEC. 243. Any person convicted before a police justice shall be punished by such fine and imprisonment as may be regulated by ordinance; *Provided*, No fine shall be greater than one hundred dollars, and no imprisonment for a longer time than three months. [S. L. 1884, ch. 57, § 25.]

Appeals from police courts.

SEC. 244. Appeals from judgment or sentence in the police courts may be taken to the district court in same manner as is now provided by law for appeals from justices' courts in criminal cases, and shall be dealt with by the courts as criminal cases. [S. L. 1884, ch. 57, § 26.]

Contempt in police court.

SEC. 245. Police justices shall have the same power to punish for contempt as justices of the peace have in like cases. [S. L. 1884, ch. 57, § 27.]

Marshal's powers as chief of police.

SEC. 246. The marshal shall be chief of police, and shall at all times have power to make and order arrests, with proper process, for any offense against the ordinances of the city or laws of the territory, and bring the offender to trial before the proper officer, and to arrest without process in all cases where any such offense shall be committed or attempted in his presence, or where he has received satisfactory information that such offense has been committed. [S. L. 1884, ch. 57, § 28.]

Powers of policemen.

SEC. 247. The policemen of the said city shall have power to arrest all offenders against the laws of the territory or city, by day or by night, in the same manner as the marshal, and keep them in the city prison or other place to prevent their escape until a trial can be had before the proper officer. [S. L. 1884, ch. 57, § 29.]

Policemen subject to orders of mayor and marshal.

SEC. 248. The policemen of the city, in the discarge of their duty, shall be subject to the orders of the mayor and marshal only. [S. L. 1884, ch. 57, § 30.]

Marshal subject to orders of mayor.

SEC. 249. The marshal, in the discharge of his duty, shall be subject to the orders of the mayor only. [S. L. 1884, ch. 57, § 31.]

Duties of officers—Deputy clerk.

SEC. 250. The duties, powers and privileges of all the officers connected with the city government, not herein defined, shall be defined by ordinance; *Provided*, That the city clerk and *ex-officio* assessor shall have authority, by and with the consent of the mayor and city council, to appoint a deputy clerk, and such deputy, when so appointed, shall take and subscribe a like oath of office with his principal, and may perform all the duties of said office in the name of his principal, and his acts shall be valid and have the same force and effect as if done by his principal; *Provided further*, The city clerk shall be responsible on his official bond for the acts of his deputy. [S. L. 1884, ch. 57, § 32.]

Compensation of officers.

SEC. 251. The salary or compensation of the several officers of the city shall be such as may be provided for by ordinance or by resolution of the council approved by the mayor: *Provided*, That such compensation shall not exceed the following amounts paid per annum to such officers, to wit: For the mayor, not more than four hundred dollars; for each councilman, not more than one hundred dollars; for the city treasurer, not more than one and one-half per centum for receiving, and not more than one and one-half per centum for disbursing all moneys of the city, but no percentage shall be allowed to the treasurer for moneys paid over to his successor in office; for the city clerk, not more than one hundred and fifty dollars for all services as clerk, and not more than one-half of one mill on the dollar upon the equalized value of all property actually assessed by him for all services as *ex-officio* assessor; for the attorney, not more than three hundred dollars, but the mayor and council may employ additional legal counsel or increase the compensation of the attorney by allowing a just and reasonable amount in the prosecution or defense of any important suit wherein the city is a party; for the city marshal and *ex-officio* tax collector, not more than twelve hundred dollars; for the chief engineer of the fire department, not more than one hundred and fifty dollars, and to the assistant engineer of said fire department, not more than seventy-five dollars; for each regular policeman, not more than nine hundred dollars, and for special policemen and the civil engineer, such reasonable compensation, per day or otherwise, as the mayor and council may fix and determine. [S. L. 1884, ch. 57, § 33.]

Misbehavior of officers—Removal of mayor.

SEC. 252. Any officer of the said City of Laramie who shall do any act prohibited by this charter, or shall fail to do do any act enjoined therein, shall, on conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months, in the discretion of the court: *Provided*, That the mayor may be removed for cause by the vote of all the members elected to the council. [S. L. 1884, ch. 57, § 34.]

City is successor to former municipal government.

SEC. 253. That in order to protect the rights of all parties and the interests of the public, the municipal corporation and city government hereby created is hereby declared to be the legal successor of the town of Laramie City, a municipal corporation heretofore created by law and existing within and embracing a portion of the limits of the City of Laramie, as defined by this chapter; and such city shall have all the rights, liabilities and immunities that of right now or did appertain to its said predecessor, the town of Laramie City, and shall be liable for all the just debts, liabilities and obligations of said town, and shall succeed to all the real, personal and mixed property thereof, and all ordinances of the town of Laramie City now in force, shall remain in full force, and shall be valid ordinances of the City of Laramie until repealed or amended, and all such ordinances of the said town of Laramie City may be proved by the certificate of the clerk of said City of Laramie, under the seal of the said city, and when such ordinances are printed in pamphlet form, and purporting to be published by authority of the said City of Laramie, they shall be read and received in all the courts and places without further proof. [S. L. 1884, ch. 57, § 35.]

What lands subject to municipal tax.

SEC. 254. No real property, nor any improvements thereon, within the limits of said City of Laramie, as defined by this chapter, not within the limits of the town of Laramie City, and not within the additions made or attempted to be made thereto by Henry D. Hodgeman and James M. Sherod, respectively, shall be subject to any assessment, tax or charge for any of the purposes of said City of Laramie, until such time as the said real property shall be surveyed, laid out and platted into city or town lots by the authority of said city, by and with the written consent of the owner or owners thereof, but all property, real, personal and mixed, not exempt from taxation by the laws of this territory, lying, being and included within the limits of the town of Laramie City, as the same existed prior to the passage of this chapter, including the said additions made or attempted to be made to said town by the said Henry D. Hodgeman and James M. Sherod, respectively, and all additions made or attempted to be made to said town, the plat of which is filed in the office of the county clerk and *ex-officio* register of deeds of Albany County, Wyoming Territory, shall be subject to assessment, taxation and charge for the purposes of said City of Laramie; *Provided*, That nothing herein contained shall prevent any legislative assembly of this territory, or of any state or territory, having said property herein exempted from taxation within its limits, from repealing, amending or modifying any of the provisions of this section. [S. L. 1884. ch. 57, § 36.]

Vested rights preserved.

SEC. 255. Nothing in this chapter contained shall be so construed as to confer or grant to the said town of Laramie City or the said City of Laramie, or to vest in them, or either of them, any property, the title to which is in dispute, or is now the subject of litigation, but any action, suit or proceeding, either at law or in equity, instituted prior to or after the passage of this chapter, involving the title or any right or interest to any property claimed by said town or said city, shall be prosecuted to final judgment or decree, the same as if this chapter had not passed. [S. L. 1884, ch. 57, § 37.]

CHAPTER 6.

LARAMIE WATER WORKS.

SECTION.
256. Control of water works.
257. Protection, repair and extension of water system.
SECTION.
258. Compromising with adverse claimants.

Control of water works.

SEC. 256. The town of Laramie City, by its board of trustees duly constituted, may have and exercise control of the water works and supply of water therefrom in said town. [S. L. 1877, p. 134, § 1.]

Protection, repair and extension of water system.

SEC. 257. Said board of trustees for said town of Laramie City shall have authority and power to provide for the protection and repairs of all water mains in said town, and further, to protect and extend the water system of said town in such manner as they may deem most expedient, by the extension of the mains and lateral ducts, the construction of additional mains and ducts and the establishment of hydrants and fire-plugs, or otherwise to maintain and increase convenience and economy in the use of the water supply of said town; and to that end said trustees are authorized and empowered to prescribe such regulations concerning the use of said water as may be necessary and proper, to fix water rates and to levy and cause to be collected special taxes for the maintenance and extension of the water system of said town; *Provided*, That nothing hereinbefore contained shall be construed to interfere with the rights and privileges hereinbefore acquired to the free use of water by property holders at their own expense, in the construction of lateral ducts, hydrants or other water appliances, or with any vested right in and to the use of said water. [S. L. 1877, p. 134, § 2.]

Compromising with adverse claimants.

SEC. 258. If any adverse right conflict with the right of said town to regulate and control the water works and privileges the board of trustees aforesaid may adjust and compromise, purchase or otherwise acquire such conflicting right, which may vest in said town for a term of years, or forever. [S. L. 1877, p. 134, § 3.]

CHAPTER 7.

LARAMIE SEWERAGE.

SECTION.

259. Sewerage system—Issue of bonds.
260. Call for special bond election.
261. Manner of conducting election.
262. When bonds shall be issued.
263. Registration of bonds.
264. Annual bond tax—Sinking fund.
265. Payment of bonds.
266. Investment of funds.
267. Cancellation of bonds.
268. Custody of funds—Bond of treasurer.
269. Compensation of treasurer.

Sewerage system—Issue of bonds.

SEC. 259. The City of Laramie, in the Territory of Wyoming, in its corporate capacity, is hereby authorized and empowered to construct, maintain, extend and operate a system of sewerage, within the limits of the said city, and for such purpose the mayor and the council of said city are hereby authorized and empowered to issue the bonds of said city for any sum not to exceed forty thousand dollars, which said bonds shall be issued only under and by virtue of the provisions of this chapter, and after the qualified electors of said city shall have so determined at any regular annual city election, or at a special city election called for that purpose, as hereinafter provided. [S. L. 1886, ch. 88, § 1.]

Call for special bond election.

SEC. 260. Whenever the mayor and the council of said city shall determine that a system of sewerage shall be necessary, or ought to be established in the said city, they shall either by ordinance or by resolution, provide for the submission of the question of bonding the said city for the construction, operation, extension and maintenance of a sewer system therein, to a vote of the qualified electors of said city, and shall issue a call for a special election to be held for that purpose within said city, by causing a notice of said election to be published in one or more of the newspapers published in said city, at least thirty days before such an election shall be held, or they may cause such question to be submitted to the qualified electors of said city at any regular annual city election held in said city, and may give such notice thereof as is prescribed by law for notice of such elections. [S. L. 1886, ch. 88, § 2.]

Manner of conducting election.

SEC. 261. Such election and the canvass and returns shall be had, held, conducted and governed in all respects by laws governing the regular annual city elections in said city, and the ballots for such election and voted thereat, shall be either written or printed, or partly written or partly printed, and shall contain the words "for sewer bonds," or the words "against sewer bonds." [S. L. 1886, ch. 88, § 3.]

When bonds shall be issued.

SEC. 262. If it shall appear upon the canvass of said election and the votes cast on said question and proposition, that a majority of the qualified electors, voting on such proposition and question, shall have voted "for sewer bonds," then and not otherwise, the mayor and the council of the said city may, within five years thereafter, issue coupon bonds of said city, which shall be denominated "sewer bonds," and be numbered consecutively from one upwards, each of the denomination of one thousand dollars, payable thirty years from the date of the first issue of said bonds, and which shall bear interest at a rate not exceeding seven per centum per annum, payable annually on the first day of January in each year, and the principal and interest of said bonds shall be payable in lawful money of the United States of America, and at such place or places as shall be designated by the mayor and the council, and such bonds shall be signed by the mayor, attested by the clerk and countersigned by the treasurer of said city, and shall only be sold and disposed of from time to time, to an amount sufficient to construct, operate, maintain and extend a system of sewerage in said city, as the mayor and the council may from time to time determine, but the amount of all of the issue of said bonds shall not exceed in the aggregate the amount of forty thousand dollars; *Provided*, That said bonds shall not be sold for less than ninety-five per centum of the par or face value thereof, and that no greater amount of said bonds shall be issued from time to time than shall be necessary for the construction, completion or extension of the said sewer system. [S. L. 1886, ch. 88, § 4.]

Registration of bonds.

SEC. 263. The treasurer of said city shall keep a book in his office in which shall be registered all of said bonds, showing the number of each bond, the date of its issue, to whom issued, the amount, date of redemption and payment of interest, which book shall be open for the inspection of any and all persons desiring to examine the same during business hours, and any person holding any of said bonds may have the same endorsed as so registered on the face of the bond by the city treasurer, and such bonds shall only be transferable by registration on the books of the city treasurer. [S. L. 1886, ch. 88, § 5.]

Annual bond tax—Sinking fund.

SEC. 264. For the purpose of the prompt payment of the principal and interest of said bonds, there shall be annually levied and collected on all taxable property within said city, a sufficient tax to pay the interest on said bonds as the same becomes due, and after ten years from the date of the first issue of said bonds, in addition to the said tax for the payment of the interest on said bonds, a sinking fund tax shall also be annually levied in such amount not to exceed the sum of one thousand dollars, as the mayor and the council shall deem sufficient, with accruing interest thereon, to be realized as hereinafter provided to retire and pay said bonds at their maturity, and such taxes to pay the interest on said bonds, and to provide a sinking fund for the payment thereof as aforesaid, shall be levied in addition to other city taxes, and shall be levied and collected in the same manner as other taxes of said city. [S. L. 1886, ch. 88, § 6.]

Payment of bonds.

SEC. 265. The said taxes, as provided for in the preceding section shall be paid in cash, and shall be known as the "sewer bond interest tax," and as the "sewer bond sinking fund tax," and shall be used for the payment of the payment of the principal and interest respectively, of the bonds issued under the provisions of this chapter, and for no other purpose. [S. L. 1886, ch. 88, § 7.]

Investment of funds.

SEC. 266. The proceeds of the said "sewer bond sinking fund tax" shall annually, and so soon as the same is collected for the then current year, be invested in loans upon good and sufficient security, for a term not exceeding the date of the maturity of said bonds, at a rate of interest not to exceed seven per centum per annum, and such investment shall be made by the city treasurer, subject to the approval of the mayor and the council. [S. L. 1886, ch. 88, § 8.]

Cancellation of bonds.

SEC. 267. It shall be the duty of the city treasurer as rapidly as the coupons representing the interest on said bonds are paid, to cause the word "paid" to be cut in the same, and as rapidly as the said bonds are paid he shall cause the word "paid" to be cut in the body of the same, and shall otherwise properly cancel the same. [S. L. 1886, ch. 88, § 9.]

Custody of funds—Bonds of treasurer.

SEC. 268. The city treasurer shall be the custodian of all moneys arising from the sale of said bonds, and all moneys collected for the payment of interest thereon, and for the said sinking fund, and he shall give such bond or bonds for the safe keeping, disbursement and investment of said moneys, as in this chapter required from time to time in such amount or amounts and with such conditions and with such sureties, as the mayor and council shall, from time to time, require. [S. L. 1886, ch. 88, § 10.]

Compensation of treasurer.

SEC. 269. The city treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of said bonds, not to exceed one per centum on each dollar actually received and disbursed upon the order or orders, warrant or warrants of the said city therefor, but he shall receive no commission, fees or compensation for any sum or sums turned over by him to his successor in office; and in case he shall loan or invest the proceeds of the said sinking fund, he shall be allowed such reasonable compensation therefor as the mayor and council shall allow. [S. L. 1886, ch. 88, § 11.]

CHAPTER 8.

EVANSTON CHARTER.

SECTION.
270. Corporate limits and name.
271. Trustees, election and compensation.
272. Appointive officers.
273. Annual tax.
274. First election—Statement to be filed with county clerk.
275. Notice of election.
276. Vacancies in board of trustees.
277. President of board—Oath of officers.
278. General powers.
279. Special elections.
280. Qualifications of electors.
281. Opening and closing of polls.
282. Receiving and canvassing votes.
283. Inspectors of elections.
284. Annual meeting of trustees—Appointment of officers.
285. Enumeration of specific corporate powers.
286. Fines and penalties.
287. Moneys, how appropriated.
288. Presentation and verification of claims against city.
289. Claims to be paid by warrants.
290. Borrowing money.
291. Bonds of officers.
292. Delivery to successor in office.
SECTION.
293. General tax.
294. Duties of assessor.
295. Board of equalization.
296. Tax levy.
297. Tax warrant.
298. Collection of tax—Distress and sale.
299. President may act as mayor.
300. Duties of treasurer.
301. Publication of financial statement.
302. Duties of clerk.
303. Power of marshal.
304. Street improvement.
305. Fire wardens.
306. Public grounds.
307. Evidence of corporate capacity.
308. Collection of fines and penalties.
309. Proof of ordinances.
310. Punishment by imprisonment.
311. Prosecution of offenders.
312. Rules of practice.
313. Passage and record of ordinances.
314. How incorporation effected.
315. Form of ballot.
316. First election.
317. Elections to be by ballot.

Corporate limits and name.

SEC. 270. All that portion of the Territory of Wyoming situate on Bear River, in the County of Uinta, near the Union Pacific Railroad, laid out and platted as a town site by the Union Pacific Railroad Company, under and by the name of Evanston, together with all the additions that may be hereafter made thereto according to law, is hereby declared to be a corporation by the name of the City of Evanston. [S. L. 1882, ch. 43, § 1.]

Trustees, election and compensation.

SEC. 271. There shall be elected, as hereinafter provided, a board of trustees, consisting of three members, the one receiving the highest number of votes to serve three years, the one receiving the next highest number, to serve two years, and the one receiving the next highest number, to serve one year, and on the second Tuesday of March of each year thereafter, there shall be elected one trustee, who shall hold his office for three years from the date of his election. In case such trustees or part thereof shall receive an equal number of votes, then the term that each so receiving an equal number of votes shall serve, shall be determined by lot. Said trustee shall respectively discharge all the duties of their offices for the sum of fifty dollars per annum. [S. L. 1882, ch. 43, § 2.]

Appointive officers.

SEC. 272. So soon as the board of trustees can organize after the annual election is held, they shall proceed to appoint a mayor, treasurer, assessor, clerk and city marshal, who shall hold their offices until their successors are appointed and qualified, unless sooner removed by the board of trustees, and shall give bonds as hereinafter provided and required, and shall receive such compensation as the board of trustees may determine upon. [S. L. 1882, ch. 43, § 3.]

Annual tax.

SEC. 273. Said trustees shall have power to levy and collect an annual tax not exceeding five mills on the dollar in any one year, which shall be devoted to the payment of the actual expenses of the city government for the current year. [S. L. 1882, ch. 43, § 4.]

First election—Statement to be filed with county clerk.

SEC. 274. At the first meeting of the qualified voters as hereinafter provided, polls shall be opened at nine o'clock in the forenoon of said day, and remain open until sunset in the afternoon, when they shall be closed. The voters at such meeting shall first proceed to the selection of three inspectors, who, after being duly selected and qualified, and having elected one of their number clerk, shall without delay proclaim to the meeting that the poll is now opened and that they are ready to receive the ballots of the voters. The three persons having received the greatest number of votes shall be declared elected trustees, and it shall be the duty of such inspectors to make a certified statement, over their own signatures, of the persons selected as such board of trustees, and file the same with the register of deeds of Uinta County within six days of the day of such election. And no act or ordinance of any board of trustees chosen at such election, shall be valid until the provisions of this section are substantially complied with. And it shall be the duty of the register of deeds of Uinta County to make a record of such certified statement. At all elections for trustees, the provisions of this section shall be substantially complied with. [S. L. 1882, ch. 43, § 5.]

Notice of election.

SEC. 275. There shall be at least ten days notice of all elections, except the first one held under the provisions of this chapter, given by the clerk of said city, pursuant to order of such board of trustees, in a newspaper, if any printed in said city, otherwise by posting up notices in five public places therein. [S. L. 1882, ch. 43, § 6.]

Vacancies in board of trustees.

SEC. 276. In case of a vacancy occurring in the board of trustees, it shall be filled as provided in section two hundred and seventy-nine by the remaining members of such board of trustees at a special meeting of the trustees held for that purpose. [S. L. 1882, ch. 43, § 7.]

President of board—Oath of officers.

SEC. 277. The board of trustees, chosen as aforesaid, shall elect a president of their own body, and such president and all other officers elected or appointed, shall, within five days after such election or appointment, take and subscribe before some person authorized to admininster the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices. [S. L. 1882, ch. 43, § 8.]

General powers.

SEC. 278. The president and trustees of said City of Evanston and their successors in office shall constitute a body politic and corporate by the name of the City of Evanston, and shall be capable in law and equity to prosecute and defend suits to which they are a party. [S. L. 1882, ch. 43, § 9.]

Special elections.

SEC. 279. Special meetings of the qualified voters of said city, may be called by the clerk by the order of the trustees of said city, by giving five days notice thereof in a newspaper, if any be printed in said city, otherwise by posting up such notices in five public places therein; and such notice shall state the object for which such meeting is called. [S. L. 1882, ch. 43, § 10.]

Qualifications of electors.

SEC. 280. No person shall be deemed a qualified voter and entitled to vote at any election held under the provisions of this chapter, who has not been a *bona fide* resident of said city at least two months immediately preceding the election at which he offers to vote, nor unless he or she possesses all the other qualifications of a voter prescribed by the election law of the territory. [S. L. 1882, ch. 43, § 11.]

Opening and closing of polls.

SEC. 281. At all elections in said city the polls shall be opened at nine o'clock in the forenoon of said day, and not closed until sunset of said day. [S. L. 1882, ch. 43, § 12.]

Receiving and canvassing votes.

SEC. 282. The inspectors of the elections held under the provisions of this chapter, in the receiving and canvassing of votes, shall be governed by the laws then existing, so far as they are applicable, for the election of members of the legislative assembly. [S. L. 1882, ch. 43, § 13.]

Inspectors of elections.

SEC. 283. At all elections held under the provisions of this chapter, except the first one, the president and two electors selected from the bystanders by the legal voters of said town, shall act as inspectors of such elections. [S. L. 1882, ch. 43, § 14.]

Annual meeting of trustees—Appointment of officers.

SEC. 284. The said board of trustees shall hold a regular annual meeting in each and every year on the first Tuesday in April and appoint the following officers: One mayor, one treasurer, one assessor, one clerk, one city marshal, and one or more policemen, as they may deem expedient, who shall hold their offices for one year unless sooner removed by said board of trustees; said clerk shall receive for his services as salary a sum not exceeding one hundred and fifty dollars per annum. Said marshal shall receive for his salary a sum not exceeding one hundred dollars per month. Said policeman shall receive for his salary a sum not exceeding seventy-five dollars per month. [S. L. 1882, ch. 43, §15.]

Enumeration of specific corporate powers.

SEC. 285. The board of trustees shall have the following powers, viz:

First - To have a common seal and alter the same;

Second—To purchase, hold or convey any estate, real or personal, for the use of said city so far as may be necessary to carry out the provisions of this chapter;

Third—To organize fire companies, hook and ladder companies; to regulate their government and the times and manners of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets, which are hereby declared to be appurtenances to the real estate and exempt from execution, seizure or sale; to regulate the storage of gunpowder and other dangerous material; to direct the construction of a place for the safe deposit of ashes, and may under an order by them entered upon the proper book of the board, visit, or appoint one or more fire wardens to visit, and examine at all reasonable hours, dwelling houses, lots, yards, enclosures and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stovepipes; to prevent out-fires and the use of fire works and the discharge of firearms within the limits of said city or such parts thereof as they may deem proper; to compel the inhabitants of said city to aid in the extinguishment of fires, and prevent its communication to other buildings under such penalties as may be provided by ordinances adopted by said trustees; to construct and preserve reservoirs, wells, pumps and other water works, and to regulate the use thereof, and generally to establish other measures of prudence for the prevention or extinguishment of fires as they may deem proper;

Fourth—To declare what shall constitute a nuisance, and to prevent, abate and remove the same and take such measures for the preservation of the public health as they may deem necessary;

Fifth—To restrain from running at large cattle, sheep, swine and other animals;

Sixth—To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame; to authorize the seizure and destruction of gambling apparatus, and to license the sale of spirituous and intoxicating liquors, and such license shall clearly state upon its face the conditions of such license. Said license shall not exceed the sum of eighty dollars per annum;

Seventh—To license, regulate or prevent auction establishments, traveling peddlers, and public exhibitions within the corporation;

Eighth—To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings and to keep them in repair and vacate the same;

Ninth—To prohibit the incumbrance of the sidewalks of said city, and riding or driving thereon except across the same;

Tenth—To insure the public property of said city;

Eleventh—To purchase and lay out and regulate cemeteries;

Twelfth—To plant trees upon public grounds and along the streets of said city and provide for their culture and preservation, and to enclose any public square or any public grounds within said city;

Thirteenth—To levy and collect an annual tax on property not to exceed five mills on the dollar;

Fourteenth—To make and establish such by-laws and regulations and ordinances not repugnant to the laws or organic act of this territory, as may be necessary to carry into effect the provisions of this chapter; and to repeal, alter or amend the same as they may deem expedient. But every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such city, if one be printed therein, or posted in five public places at least ten days before the same shall take effect. [S. L. 1882, ch. 43, § 16.]

Fines and penalties.

SEC. 286. Such board of trustees shall have power to enact fines and penalties for violations of this chapter or of any by-law or ordinance by them established, not exceeding fifty dollars for any one offense, which may be recovered in an action in the name of the corporation, but such board may remit the whole or any part of such fine or penalty; *Provided*, That the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required for such license. [S. L. 1882, ch. 43, § 17.]

Moneys, how appropriated.

SEC. 287. All moneys, however derived, belonging to such corporation, shall only be appropriated for such objects, and defraying such expenses as accrue or necessarily arise in the exercise of powers granted by this chapter. No appropriation shall be made without an order to that effect, entered upon a proper book kept for that purpose by such board of trustees; *Provided*, That no appropriation shall be made unless there be money not otherwise appropriated in the treasury at the time of making such appropriation. [S. L. 1882, ch. 43, § 18.]

Presentation and verification of claims against city.

SEC. 288. No account or claim against said city shall be audited or allowed by the board of trustees unless it be made out fully and itemized, and properly subscribed and sworn to, and every such account audited shall be numbered from one upwards, in the order of their presentation, and a memorandum of the same entered upon a book to be kept exclusively for that purpose. [S. L. 1882, ch. 43, § 19.]

Claims to be paid by warrants.

SEC. 289. No account or claim shall be paid unless properly subscribed and sworn to, audited, and allowed by the board as aforesaid; and no money shall be drawn from the treasury except upon a warrant upon the treasurer, signed by the president of the board of trustees, attested by the clerk. [S. L. 1882, ch. 43, § 20.]

Borrowing money.

SEC. 290. The city incorporated, by this chapter, shall not have power to borrow money or incur any debt or liability, unless the citizen owners of five-eighths of the property taxable in such city, as evidenced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan; and any such petition shall have attached thereto an affidavit verifying the genuineness of the same, and for any debt created thereby, the trustees shall add to the tax duplicate of each year successively, a levy sufficient to pay the annual interest on such debt or loan, with an addition to create a sinking fund for the liquidation of the principal thereof; *Provided*, That in no case shall the levy exceed two mills on the dollar in any one year. [S. L. 1882, ch. 43, § 21.]

Bonds of officers.

SEC. 291. The clerk, assessor, treasurer and marshal shall, within ten days from the date of their appointment, each and severally, give bonds payable to the Territory of Wyoming with two sufficient sureties, to such an amount as the board of trustees shall direct, but the bonds of the treasurer and marshal shall not be respectively less than double the amount of the estimated tax duplicate for the current year. [S. L. 1882, ch. 43, § 22.]

Delivery to successor in office.

SEC. 292. All books and vouchers, together with all money and other property belonging to the corporation, and in the charge or possession of any officer of the same, shall be delivered to his successor when qualified. [S. L. 1882, ch. 43, § 23.]

General tax.

SEC. 293. The board of trustees shall, before the third Tuesday of April, of each year after the city shall have been incorporated, determine the amount of general tax for the current year. [S. L. 1882, ch. 43, § 24.]

Duties of assessor.

SEC. 294. The assessor shall assess all property liable to taxation within the corporate limits of said city at its true cash value, and shall make return of his assessment roll to such board of trustees, on or before the third Tuesday in May of each year, and shall receive for his services as such assessor, six dollars per day for the time actually employed in making said assessment. [S. L. 1882, ch. 43, § 25.]

Board of Equalization.

SEC. 295. The board of trustees and assessor of the city shall constitute a board for the equalization of the assessment of the several persons in the city, substantially in the same manner as is required of the county board of equalization, and they shall hold a special meeting at the office of the city clerk in the City of Evanston within five days after the return of the assessment roll in each year, and shall have the right to adjourn such meeting from day to day for not more than three days; and at such meeting they shall add to said assessment roll any taxable property in the city not included in the assessment as returned by the assessor, and shall assess the value thereof, and shall hear and determine the complaints of all persons feeling aggrieved by the assessment of their property as returned by the assessor, and for the purpose of equalizing the assessment roll may increase, diminish or otherwise alter, and correct any assessment; *Provided*, It shall be the duty of the clerk of the board of trustees to give notice to each person, company or corporation whose assessment has been raised by the board of equalization, stating the amount of such raise or increase of assessment as aforesaid, such notice may be given by personal service or by statement, either written or printed, postage prepaid by mail and properly addressed to such person, company or corporation, or to the agent or agents or attorney, or any of them; either of whom may appear before the board of equalization at their next regular meeting and upon evidence satisfactory to the board of equalization that the assessment or any part thereof is unjust or more than the actual cash value of such property, so assessed, the board of equalization shall abate such tax in proportion to such unjust, erroneous assessment; *Provided*, It is evident to the board of equalization that no part of such claimants taxable property has been omitted or under valued in the original assessment, or by the board of equalization for the year or years for which such claim or claims are made. [S. L. 1882, ch. 43, § 26.]

Tax levy.

SEC. 296. When the assessment roll shall have been corrected and completed the trustees shall levy a tax upon the taxable property situate within the corporate limits of said city not exceeding five mills on the dollar in any one year, and shall set opposite the name of each person taxed a description and valuation of the property charged therewith and the amount of the tax assessed against such person; and when such tax list shall have been made they shall cause a copy thereof with a warrant annexed, to be delivered to the marshal of said city, who is hereby charged with the safe custody of the same. [S. L. 1882, ch. 43, § 27.]

Tax warrant.

SEC. 297. Such warrant shall be under the seal of the corporation and be signed by the president and trustees, or a majority of them and attested by the clerk, and shall command the marshal to collect the taxes specified in his duplicate within sixty days and pay over the same, and make return of such warrant to the treasurer of said city. The lien for taxes for corporation purposes shall attach to all property owned by each person subject to taxation under this chapter from the day the tax list or duplicate and warrant comes into the hands of the marshal. [S. L. 1882, ch. 43, § 28.]

Collection of tax—Distress and sale.

SEC. 298. The marshal shall collect the taxes on said duplicate and shall have power to collect by distress and sale, and to make conveyances and certificates of real estate sold by virtue of such sale, which sale shall be held at the door of the city hall or place of meeting of the board of trustees and all deeds or conveyances for lands so sold for taxes shall be *prima facie* evidence of the validity of such purchase. [S. L. 1882, ch. 43, § 29.]

President may act as mayor.

SEC. 299. The president of said board of trustees may act as mayor, with and by the consent of such board, and shall have jurisdiction to hear and determine all cases arising under the ordinances of said city, and the practice before such mayor in such cases shall conform as near as may be to the provisions of the justices' code concerning complaints, continuances, changes of venue, and appeals. In case such president shall decline to act as mayor, or in case it shall be determined otherwise by a majority of the board of trustees, then such board of trustees shall appoint some suitable person as mayor, who shall have all the powers delegated to the president in this section as such mayor. [S. L. 1882, ch. 43, § 30.]

Duties of treasurer.

SEC. 300. The treasurer of said city shall so keep his accounts as to show when and from what sources all moneys paid to him have been derived, and to whom, and when such moneys or any part thereof have been paid. The treasurer shall grant all licenses authorized by this chapter upon the presentation of the receipt of the marshal that the money therefor has been paid to said marshal; his books, accounts and vouchers shall at all times be subject to examination by said board of trustees or any citizen of said city and it is hereby made their duty to examine the same at regular meetings of such board on some day between the first and last Monday of March of each year, and have settlements with the said treasurer. Said treasurer shall receive as compensation for his services, for all moneys coming into his hands, one per cent. for receiving and one per cent. for disbursing, except such money as shall be turned over by him to his successor in office. [S. L. 1882, ch. 43, § 31.]

Publication of financial statement.

SEC. 301. It shall be the duty of the board of trustees, immediately after the annual settlement with the treasurer, to publish in a newspaper, if one be printed in said city, or if there be no newspaper, then by posting, in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, and what appropriations were made, for what object and the specific amount of each. [S. L. 1882, ch. 43, § 32.]

Duties of clerk.

SEC. 302. The clerk of said city shall have the custody of the records, books and papers of the board of trustees and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office and required of him by the by-laws. [S. L. 1882, ch. 43, § 33.]

Powers of marshal.

SEC. 303. The marshal of said city shall possess and be subject to the liabilities possessed and conferred by the act upon constables, in executing the orders of the trustees or in enforcing the by-laws and ordinances of said city. [S. L. 1882, ch. 43, § 34.]

Street improvements.

SEC. 304. The board of trustees shall superintend the grading, paving and improving of streets, and the building and repairing of sidewalks. [S. L. 1882, ch. 43, § 35.]

Fire wardens.

SEC. 305. The fire wardens shall attend all fires and give their personal superintendence to extinguishing the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department; the trustees shall, by virtue of their office, be fire wardens. [S. L. 1882, ch. 43, § 36.]

Public grounds.

SEC. 306. The trustees shall have jurisdiction over any commons, public grounds or other property belonging to said city, and shall have power to annex to said city contiguous territory thereto, upon the written application of the owner or owners of such contiguous territory; and when said territory is so annexed it shall be a part of said city, and be subject to all the provisions of this chapter. [S. L. 1882, ch. 43, § 37.]

Evidence of corporate capacity.

SEC. 307. Whenever any suit shall be instituted by said city in any of the courts of this territory, said city shall not be required to show its compliance with the provisions of this chapter as to its organization or publication of its by-laws or ordinances, unless the same is controverted by affidavit. [S. L. 1882, ch. 43, § 38.]

Collection of fines and penalties.

SEC. 308. All actions brought to recover any penalty or fine incurred under this chapter or by-laws and ordinances made in pursuance thereof, shall be brought in the corporate name of said city, and the recoveries upon the same when collected shall be paid into the treasury of said city; the process in every such action shall be a warrant, and the person named in such warrant shall be arrested and forthwith taken before the mayor or some justice of the peace in said city for trial. [S. L. 1882, ch. 43, § 39.]

Proof of ordinances.

SEC. 309. In actions brought to recover any penalty or fine incurred under this chapter or under the by-laws or ordinances made in pursuance thereof, it shall not be necessary to file with the affidavit or complaint a copy of the ordinances or by-laws or section thereof charged to have been violated, but it shall be sufficient to recite in the affidavit or complaint the number of the section charged to have been violated, with the date of its adoption. [S. L. 1882, ch. 43, § 40.]

Punishment by imprisonment.

SEC. 310. If the penalty or fine in which judgment is obtained is not paid or replevied, the defendant may be committed for any period not exceeding forty days to the workhouse of said city, or if said city have no workhouse, then to the county jail or prison in which said city is situate, or in default of payment of such judgment and costs, the defendant may be adjudged and required to pay the same by manual labor in the workhouse or upon the streets or other public works of said city, under control of the marshal of said city, for which labor the said defendant shall be allowed on such judgment and costs, one dollar per day. It shall be the duty of said marshal to work such defendant not less than eight hours nor more than ten hours per day, according to the season, and each evening to return such defendant to the custody of the keeper of such prison or workhouse; and upon the full payment of such judgment and costs said defendant shall be fully discharged. [S. L. 1882, ch. 43, § 41.]

Prosecution of offenders.

Sec. 311. Any person violating the provisions of this chapter or any ordinance or by-law made in pursuance thereof, to which there may be a penalty affixed, may be prosecuted before the mayor or any justice of the peace of said city, upon warrant issued by such mayor, or justice of the peace, as in case of misdemeanor; and such person, upon conviction, shall stand committed until the fine and costs are paid or replevied according to the provisions of the last preceding section. [S. L. 1882, ch. 43, § 42.]

Rules of Practice.

Sec. 312. The rules of practice and proceedings in the mayor's and justices' courts for violation of the provisions of this chapter or of any by-laws or ordinances passed in pursuance of this chapter, except where the chapter or some by-law or ordinance passed in pursuance thereof shall otherwise direct, shall be the same as those pertaining to the trials for misdemeanor under the laws of this territory. [S. L. 1882, ch. 43, § 43.]

Passage and record of ordinances.

Sec. 313. All by-laws and ordinances shall within a reasonable time after passage be recorded in a book kept for that purpose, and shall be signed by the president of the board of trustees and attested by the clerk; on the passage of any by-law, ordinance or resolution, the ayes and nays shall be taken and entered on the journal. [S. L. 1882, ch. 43, § 44.]

How incorporation effected.

Sec. 314. The provisions of this chapter shall not be binding until a petition signed by not less than twenty-five tax-payers, representing not less than one hundred thousand dollars of taxable property within the limits of the City of Evanston, has been presented to the county commissioners of Uinta County. Such petition shall ask for the calling of a special election, to comply with the provisions of this chapter. The county commissioners of said county shall, upon the presentation of such petition and within ten days of the receipt thereof, issue a call for a special election to be held within the limits of the City of Evanston, which special election shall be governed in all respects by the laws made and provided for special elections. [S. L. 1882, ch. 43, § 45.]

Form of ballot.

Sec. 315. The ballots for such election shall be either written or printed, or partly written, or partly printed, as follows: "———— incorporation," leaving a space before the word "incorporation," for the voters to write or print the words "for" or "against" as they may deem proper. [S. L. 1882, ch. 43, § 46.]

First election.

Sec. 316. In case it shall be found that a majority of the qualified voters of the said City of Evanston have voted "for incorporation," then the said commissioners shall immediately, or within ten days of ascertaining the result of such vote, issue a call for a special election for the purpose of electing three trustees as provided in section two hundred and seventy-one, and such special election shall be governed in all respects by the laws made and provided for special elections; all vacancies shall be filled in the same manner. [S. L. 1882, ch. 43, § 47.]

Elections to be by ballot.

Sec. 317. All elections held under the provisions of this chapter shall be by ballot. [S. L. 1882, ch. 43, § 48.]

CHAPTER 9.

BUFFALO CHARTER.

SECTION.
318. Corporate limits and name.
319. General corporate powers.
320. By whom powers exercised.
321. Police justice—Jurisdiction.
322. Mayor and trustees—Term of office—Qualifications—Annual elections.
323. Qualifications of voters.
324. Regular meetings of trustees.
325. Duties of mayor—Casting vote.
326. Appointive officers.
327. Mayor to sign warrants, drafts and deeds.
328. Approval and veto of mayor—Advisory powers.
329. Special meetings of trustees.
330. Officers to exhibit accounts, etc., on mayor's request.
331. Vacancy in mayor's office—New election.
SECTION.
332. Mayor may remit fines and grant pardons.
333. Quorum of trustees—Limitation.
334. General powers of mayor and trustees.
335. Enumeration of specific corporate powers.
336. Employment of an attorney.
337. Disposition of fines.
338. Fees of police justice.
339. Punishment by fine and imprisonment.
340. Appeals from police court.
341. Contempts.
342. Powers of marshal.
343. Power of policemen.
344. Policemen, to whom subject.
345. Trustees' control of officers.
346. Compensation of mayor and trustees.
347. Misbehavior of officers—Penalty.

Corporate limits and name.

SEC. 318. All that portion of the Territory of Wyoming, in the County of Johnson, immediately adjoining the United States military reservation of Fort McKinney on the east, the same being the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section thirty-five, in township number fifty-one north, of range number eighty-two west, and described in the United States survey as lots one, two and three of said section, range and township, together with all the additions that may be hereafter made thereto, according to law, is hereby declared to be a corporation by the name of the City of Buffalo; and for the preservation of health and good order, and the suppression and abatement of nuisances, said city in its corporate capacity, may and shall extend to and over all lands within one-fourth of a mile in each and every direction from the above described corporation limits. [S. L. 1886, ch. 89, § 1.]

General corporate powers.

SEC. 319. The said City of Buffalo is hereby made a body corporate and politic, and invested with all the powers and attributes of a municipal corporation, and shall have power to sue and be sued; to purchase and hold real and personal property for the use of the city; to sell and convey any real or personal property, and make such order respecting the same as may be conducive to the interests of the city; to make all contracts and do all other acts in relation to the property and affairs of the city necessary to the exercise of its corporate or administrative powers; to have and use a corporate seal and to alter the same at pleasure; to exercise such other and further powers as are or may be conferred by law. [S. L. 1884, ch. 11, § 2.]

By whom powers exercised.

SEC. 320. The powers hereby granted shall be exercised by a mayor and a board of trustees consisting of five members. [S. L. 1884, ch. 11, § 3. S. L. 1886, ch. 89, § 2.]

Police justice—Jurisdiction.

SEC. 321. It shall be the duty of the board of trustees to designate one person resident within said city, upon whom, by the laws of the territory, shall have been conferred the jurisdiction of justice of the peace, who shall be styled a police justice, and who shall have concurrent jurisdiction to hear and determine all cases arising under the ordinances of said city, and the practice before such police justice in such cases shall conform as near as may be to the provisions of the justices' code concerning complaints, continuances and appeals. [S. L. 1884, ch. 11, § 4.]

Mayor and trustees—Term of office, qualifications—Annual elections.

SEC. 322. The mayor of said city shall be elected for the term of one year, and shall hold his office until his successor is duly elected and qualified.

And at the next annual election, on the first Tuesday of April, eighteen hundred and eighty-six, there shall be elected a mayor to serve for one year, and three members of the board of trustees, one of whom shall hold his office for a term of three years, one for two years and one for one year; and at each annual election thereafter, to be held on the first Tuesday of April of each year, there shall be elected a mayor to serve for one year, and two members of the board of trustees, one to serve for the term of two years and one for three years. At each such annual election the polls shall be opened at nine o'clock a. m. and remain open until four o'clock p. m. No person shall be eligible to the office of mayor or trustee who is not a resident freeholder of said city at the time of his election, and does not possess all qualifications of electors under this charter. [S. L. 1886, ch. 89, § 3.]

Qualification of voters.

SEC. 323. Every legal voter of this territory who shall have been a *bona fide* resident of said city three months next preceding any city election shall be qualified to vote therein at such election. [S. L. 1884, ch. 11, § 6.]

Regular meetings of trustees.

SEC. 324. Regular meetings of the board of trustees shall be held on the first Tuesday of each month. [S. L. 1884, ch. 11, § 7.]

Duties of mayor -Casting vote.

SEC. 325. The mayor shall preside at all meetings of the board of trustees, and shall have a casting vote when the board of trustees is equally divided, and none other, and shall have a superintending control of all the officers and affairs of the city and shall take care that the ordinances of the city and this chapter are complied with. The mayor shall commission all officers appointed or elected. [S. L. 1884, ch. 11, § 8.]

Appointive officers.

SEC. 326. There shall be a city treasurer, a city clerk, who shall be *ex-officio* city assessor, a city marshal, who shall be *ex-officio* collector of city taxes, and such policemen as may be required, all of which officers shall be appointed by the mayor, by and with the consent of the board of trustees, and each of whom shall hold his office for the term of one year, and until his successor is appointed and qualified: *Provided*, That any of said officers may be sooner removed for cause by the mayor, the board of trustees concurring. [S. L. 1884, ch. 11, § 9.]

Mayor to sign warrants, drafts and deeds.

SEC. 327. The mayor shall sign all warrants and drafts upon the treasury for money, and require the city clerk to attest the same and affix thereto the seal of the city, and keep an accurate record thereof in a book to be provided for that purpose. And all conveyances of real estate by said city shall be signed by the mayor and have attached thereto the official seal of the city and be attested by the city clerk. [S. L. 1884, ch. 11, § 10.]

Approval and veto of mayor—Advisory powers.

SEC. 328. The mayor shall have power to sign or veto any ordinance passed by the board of trustees: *Provided*, That any ordinance vetoed by him may be passed over his veto by a vote of two-thirds of the trustees elected; and should the mayor refuse to sign any proposed ordinance or return the same with his objections in writing at the next regular meeting of the board of trustees, the same shall become an ordinance without his signature. The mayor shall from time to time communicate to the board of trustees such information and recommend such measures as, in his opinion, may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city. [S. L. 1884, ch. 11, § 11.]

Special meetings of trustees.

SEC. 329. The mayor and three trustees shall have power to call special meetings of the board of trustees, the object of which shall be stated in writing and shall be entered upon the journal by the clerk. [S. L. 1884, ch. 11, § 12. S. L. 1886, ch. 89, § 4.]

Officers to exhibit accounts, etc., on mayor's request.

SEC. 330. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his account or other papers and to make a report to the board of trustees in writing, touching any subject or matter pertaining to his office. [S. L. 1884, ch. 11, § 13.]

Vacancy in mayor's office—New election.

SEC. 331. When any vacancy shall happen in the office of mayor, by death, resignation, removal from the city, refusal to qualify, or otherwise, the president of the board of trustees, for the time being, shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, until such vacancy is filled; or in case of temporary absence, until the mayor shall return. And in case of such vacancy, other than temporary absence or disability, the person exercising the office of mayor shall cause a new election to be held, giving ten days notice thereof by proclamation. [S. L. 1884, ch. 11, § 14.]

Mayor may remit fines and grant pardons.

SEC. 332. The mayor shall have power to remit fines and to grant reprieves and pardons for all offenses arising under the ordinances of said city. [S. L. 1884, ch. 11, § 15.]

Quorum of trustees—Limitation.

SEC. 333. A majority of the board of trustees shall constitute a quorum to do business, but no action of the board of trustees by which money may be drawn from the treasury, or contract made which will bind the city in the future, shall be taken, unless such action receive the affirmative vote of a majority of all the trustees elected. [S. L. 1884, ch. 11, § 16.]

General powers of mayor and trustees.

SEC. 334. The mayor and board of trustees shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances, not repugnant to the laws of the territory, and such as shall be deemed expedient for the good government of the city, the preservation of peace and good order, the suppression of vice and immorality, the benefit of trade, the health of the inhabitants of the city, and such other rules, ordinances and regulations as may be necessary to carry such power into effect. [S. L. 1884, ch. 11, § 17.]

Enumeration of specific corporate powers.

SEC. 335. Said city, in its corporate capacity, is authorized and empowered to enact ordinances for the following purposes, in addition to the other powers granted by this chapter:

Taxation.

First—To levy and collect taxes for general revenue purposes, not exceeding five mills on the dollar in any one year, on all real, personal and mixed property within the limits of said city taxable under the laws of the territory, and the assessment, levy and collection of taxes shall be made as provided by ordinance; and for the purpose of compelling payment of taxes, said city shall have power to enforce the same by distress and sale of personal property of the person assessed, except such as is exempt from taxation; in such case the tax list shall be a sufficient warrant for such distress; and every tax levied by said city, and due upon personal property, is hereby made a lien upon the real property of the owner thereof, and every tax levied and due upon real property is hereby made a lien upon the property assessed from and after the date of the levy of such tax, and the city collector of taxes is empowered to sell lands upon which there may be a lien for taxes, and convey the same to the purchaser in manner as may be provided by ordinance. And said city may, by ordinance, provide for attaching a penalty of ten per centum on all delinquent taxes;

Street improvements.

Second—To open and improve streets, avenues and alleys, make sidewalks and build bridges, culverts and sewers within the city, and for the purpose of paying for the same, shall have power to make assessments in the following manner, to wit:

1. For opening, widening and grading all streets, avenues and alleys, and for building bridges, culverts and sewers, and for footwalks across the streets, the assessment shall be made on all real and personal estate within the corporate limits of the city, not exceeding three mills on the dollar for these purposes in any one year; and such assessment and the levy of such tax may be made at the time the regular annual tax is levied for other purposes.

2. For making and repairing sidewalks, assessment shall be made on all lots and pieces of ground abutting on the improvement, according to the front foot thereof, and shall be known as special assessments for improvements, and be subject to the same penalties and collected in like manner as other taxes.

Lighting streets.

Third—To provide for and regulate the lighting of streets and erection of lamp posts;

Licenses.

Fourth—To license, tax and regulate auctioneers, peddlers, taverns, hotels, hawkers, brokers and pawnbrokers, bill posters, and all keepers of shops and places for the sale and purchase of second-hand goods, wares and merchandise, billiard tables, bowling alleys or any game not prohibited by the laws of this territory, drays, hacks, carriages, carts and other vehicles used in the city;

Liquor licenses.

Fifth—To license, restrain, regulate, prohibit and suppress tippling houses, dram shops, and the selling or giving away of any intoxicating or malt liquors by any person within the city, except by persons duly licensed;

Control of gambling and immorality.

Sixth—To license, regulate or prohibit gambling and gambling houses and to prohibit and suppress bawdy houses, disorderly houses, houses of prostitution and houses where lewd persons assemble for dancing, desecration of the Sabbath day, commonly called Sunday, and all kinds of public indecencies;

Quarantine regulations.

Seventh—To make regulations to prevent the introduction of contagious diseases into the city;

Public health and water supply.

Eighth—To make regulations to secure the general health of the city and to prevent and to remove nuisances and to provide the city with water;

Police.

Ninth—To establish, regulate and support night watch and police, and define the powers and duties of the same;

Public buildings.

Tenth—To provide all necessary buildings for the use of the city;

Elections.

Eleventh—To appoint judges of all elections provided by ordinance and this chapter for the election of city officers, and prescribing the manner of conducting the same, the returns thereof, for deciding contested elections and for holding special elections for any purpose herein provided;

Fines and penalties.

Twelfth—To impose fines and penalties for the breach of any ordinance and also for the recovery and collection of the same, and in default of payment to provide for confinement in the city prison or for hard labor upon the streets of the city;

Official bonds.

Thirteenth—To require all officers and servants of the city, elected or appointed, to give bonds for the faithful performance of their duties;

Public wells.

Fourteenth—To establish, make and regulate public wells, reservoirs, cisterns and aqueducts, and provide for filling the same;

Control of animals running at large—Dog tax.

Fifteenth—To regulate the running at large within the city, of cattle, horses, hogs, mules, sheep, goats, dogs and other animals; and to provide for impounding the same; and to regulate and provide for taxing the owners of dogs found at large contrary to any ordinance regulating the same; and to provide for the extermination of all dogs for which the tax has not been paid;

Public peace.

Sixteenth—To prevent and restrain any riot, noise, disturbance or disorderly assemblages in any street, house or place within the city;

Vagrants.

Seventeenth—To restrain and punish vagrants, street beggars and prostitutes;

Fast driving.

Eighteenth—To prevent horse-racing, fast driving in the streets, and to authorize the arrest of persons immoderately riding or driving therein;

Fire companies and apparatus.

Nineteenth—To procure fire engines, hooks, ladders, buckets and other apparatus, and to organize fire companies and prescribe the duties of the same;

Regulating railways.

Twentieth—To regulate depots, depot grounds, and places for storing freight; to regulate the passage of railways through the streets and public grounds of the city; to regulate the crossings of railway tracks; to regulate the running of railway engines, cars and trucks within the city, and to govern the speed thereof;

Compensation of officers.

Twenty-first—To fix the compensation of city officers, and regulate the fees of witnesses, jurors and others for services rendered under this chapter, or any ordinance made in pursuance hereof;

Public safety.

Twenty-second—To regulate, punish and prevent the discharge of fire-arms, rockets, powder, fire-works or any dangerous and combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any building, and to regulate, prevent and punish the carrying of dangerous or deadly weapons openly or concealed;

General welfare clause.

Twenty-third—To make all such ordinances, by-laws, regulations, rules and resolutions, not inconsistent with the laws of the territory, as may be expedient, in addition to the special powers in this section granted; maintaining the peace, good government and welfare of the city and its trade, commerce and manufactories, and to enforce all ordinances by inflicting penalties for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment until the amount of such judgment and costs shall be paid;

Control of cemetery.

Twenty-fourth—To make any such rules and regulations with regard to improvement, preservation, laying out and ornamenting any grounds for a cemetery without the limits of the city, and for the sale of burial places or lots for interment of the dead therein, and also to provide for the punishment of all persons who shall without said city limits be guilty of a violation of any of said rules and regulations;

Appropriating money.

Twenty-fifth—To appropriate money and provide for the payment of the debts and expenses of the city;

President of board.

Twenty-sixth—To elect one of their own body, who shall be styled the "president of the board of trustees," and who shall preside at all meetings of the board of trustees in the absence of the mayor; and the president, when occupying the place of mayor, shall have the same privileges as other members of the board of trustees, and all acts of the president, while so acting, shall be binding upon the board of trustees and upon the city, the same as if done by the mayor;

Publication of financial statement.

Twenty-seventh—The board of trustees shall cause to be published, once in six months, a statement of the financial condition of the city, which statement shall be verified by the oath of the mayor, city treasurer and city clerk;

Advertising for bids.

Twenty-eighth—Before the board of trustees shall make any contract for building bridges or sidewalks, or for any work or improvements on streets, they shall advertise for bids for the same, in some paper published in said city, for at least one week; in case there shall be no paper published in said city, then by posting a written notice in at least ten different public places in said city, asking for bids, and the contract shall be let in all instances to the lowest responsible bidder; after work is performed under contract no extra compensation shall be allowed by the city;

Presentation and verification of claims against city.

Twenty-ninth—All claims against the city must be presented in writing with a full account of items, and verified by the oath of the claimant or his agent, that the same is correct, reasonable and just, and no claim shall be audited or allowed unless presented and verified as provided for in this section: *Provided*, No costs shall be recorded against such city in any action brought against it for any unliquidated claim which has not been presented to the board of trustees to be audited, nor upon claims allowed in part, unless recovery shall be for a greater sum than the amount allowed, with the interest due. [S. L. 1884, ch. 11, § 18; S. L. 1886, ch. 89, § 5 and 6.]

Employment of an attorney.

SEC. 336. Said board of trustees may employ an attorney to draft ordinances and other legal documents relating to the affairs of the corporation, and employ counsel in all cases when they deem the same necessary, and may pay such reasonable amount as may be agreed upon for such legal services; and whenever by them deemed necessary may appoint and employ a city attorney, whose duties and compensation shall be prescribed by ordinance. [S. L. 1884, ch. 11, § 19.]

Disposition of fines.

SEC. 337. All fines and penalties collected, arising from a breach of the ordinances of the city, and all moneys for licenses, shall be paid into the city treasury. [S. L. 1884, ch. 11, § 20.]

Fees of police justice.

SEC. 338. The police justice shall be entitled to such fees as may be established by ordinance: *Provided*, Such fees shall not be greater than those allowed to justices of the peace by the laws of the territory. [S. L. 1884, ch. 11, § 21.]

Punishment by fine and imprisonment.

SEC. 339. Any person convicted before the police justice shall be punished by such fine and imprisonment as may be provided by ordinance: *Provided*, No fine shall be greater than one hundred dollars and no imprisonment for a longer time than three months. [S. L. 1884, ch. 11, § 22.]

Appeals from police court.

SEC. 340. Appeals from judgment or sentence in the police court may be taken to the district court in the same manner as is provided by law for appeals from justices' courts in criminal cases, and shall be dealt with by the district courts as criminal cases. [S. L. 1884, ch. 11, § 23.]

Contempts.

SEC. 341. The police justice shall have the same power to punish for contempt as justices of the peace. [S. L. 1884, ch. 11, § 24.]

Powers of marshal.

SEC. 342. The marshal shall be chief of police, and shall at all times have power to make and order arrests, with proper process, for any offense against the ordinances of the city or laws of the territory, and to arrest without process in all cases where any offense shall be committed or attempted in his presence. [S. L. 1884, ch. 11, § 25.]

Power of policemen.

SEC. 343. The policemen of said city shall have power to arrest all offenders against the laws of the city or territory, by day or by night, in the same manner as the marshal, and keep them in the city prison or other place to prevent their escape until a trial can be had before the proper officer. [S. L. 1884, ch. 11, § 26.]

Policemen, to whom subject.

SEC. 344. The policemen, in the discharge of their duty, shall be subject to the orders of the mayor and the marshal, and the marshal be subject to the orders of the mayor only. [S. L. 1884, ch. 11, § 27.]

Trustees' control of officers.

SEC. 345. The duties, powers and privileges of all officers connected with the city government and not herein defined, shall be defined by ordinance of the board of trustees. [S. L. 1884, ch. 11, § 28.]

Compensation of mayor and trustees.

SEC. 346. The compensation of the mayor shall not exceed one hundred dollars per annum, and that of members of the board of trustees shall not exceed fifty dollars per annum, each, and no extra compensation shall be allowed to any of said officers. [S. L. 1884, ch. 11, § 29.]

Misbehavior of officers—Penalty.

SEC. 347. Any officer of said city who shall do any act prohibited by this charter, or who shall fail to do any act or duty required of such officer by this charter, shall, on conviction, be punished by fine or imprisonment, or both, in the discretion of the court. [S. L. 1884, ch. 11, § 30.]

CHAPTER 10.

SHERIDAN CHARTER.

SECTION.
348. Corporate limits and name.
349. General corporate powers.
350. By whom powers exercised.
351. Elective officers—Annual election.
352. Appointive officers—Bonds—Compensation
353. Annual tax.
354. Manner of conducting elections.
355. Notice of elections.
356. Vacancy in elective offices.
357. Special meetings of trustees.
358. Special elections.
359. Qualifications of voters.
360. Time of opening and closing polls.
361. Inspectors of elections, how governed.
362. Appointment of inspectors.
363. Regular meetings of trustees.
364. Oath of officers.
365. Duties of mayor—Casting vote.
366. Warrants, how signed and attested.
367. Approval and veto of mayor.
368. Advisory powers of mayor.
369. Officers to exhibit accounts, etc., on mayor's request.
370. Police justice—Jurisdiction—Fees.
371. Penalties for municipal offenses.
372. Mayor may remit fines.
373. Appeals from police justice.
374. Contempts.
375. Specific corporate powers.
376. Passage and recording of by laws and ordinances.
377. Style of ordinances—Publication.
378. Complaint to recover fines.
379. Committment and employment of offenders.
SECTION.
380. Prosecution for municipal offenses.
381. Proof of municipal organization.
382. Ordinances how proved.
383. Recovery and disposition of fines.
384. Trustees' meeting—Journal.
385. Presentation and verification claims against town.
386. Payment of claims.
387. Limitation on municipal indebtedness.
388. Officers shall give bond.
389. Delivery of corporate property to successors
390. Amount of annual tax, when determined.
391. Duties of assessor.
392. Board of equalization.
393. Tax levy.
394. Tax warrant—Tax lien.
395. Collection of taxes—Penalty—Tax deed.
396. Accounts and compensation of treasurer.
397. Publication of annual statement.
398. Town warrants.
399. Duties of clerk.
400. Powers of marshal.
401. Duties of street supervisor.
402. Duties of fire wardens.
403. Jurisdiction of trustees—Additions to town.
404. Powers of policemen.
405. Execution of deeds.
406. Eminent domain.
407. Officers to enter upon duties in ten days.
408. Trustees to control officers.
409. Compensation of officers.
410. Elections to be by ballot.

Corporate limits and name.

Sec. 348. All that portion of the Territory of Wyoming situate between the Little Goose creek and the Big Goose creek at their confluence in the northeast quarter of southeast quarter of section number twenty-seven, in township number fifty-six, north of range eighty-four west, in the County of Johnson, together with all the additions that may hereafter be made thereto according to law, is hereby declared to be a corporation by the name of the Town of Sheridan. [S. L. 1884, ch. 85, § 1.]

General corporate powers.

Sec. 349. The said town of Sheridan is hereby made a body corporate and politic, and invested with all the powers and attributes of a municipal corporation, and shall have power to sue and be sued; to purchase and hold real and personal property for the use of the town; to sell or convey any real or personal property and make such order respecting the same as may be conducive to the interests of the town; to make all contracts and do all other acts in relation to the property and affairs of the town necessary to the exercise of its corporate or administrative powers; to have and use a corporate seal, and alter the same at pleasure; and to exercise such other and further powers as are or may be conferred by law. [S. L. 1884, ch. 85, § 2.]

By whom powers exercised.

Sec. 350. The powers hereby granted shall be exercised by a mayor and council, consisting of three members, which number may be increased at any time hereafter to five members by an election of the electors of the town. [S. L. 1884, ch. 85, § 3.]

Elective officers—Annual election.

Sec. 351. There shall be elected on the second Tuesday of March, A. D. eighteen hundred and eighty-four, a mayor and a board of trustees consisting of three members, the one receiving the highest number of votes to serve three years, the one receiving the next highest number to serve two years, and the one receiving the next highest number to serve one year, and an assessor; and on the second Tuesday of March of each year thereafter there shall be elected a mayor of said town, who shall hold his office until his successor is duly elected and qualified; one trustee, who shall hold his office for three years from the date of his election, and an assessor, who shall hold his office for one year from the date of his election. At the first election to be held under this chapter, in case such trustees or part thereof shall receive an equal number of votes, then the term that each so receiving an equal number of votes shall serve, shall be determined by lot. [S. L. 1884, ch. 85, § 4.]

Appointive officers—Bonds—Compensation.

SEC. 352. So soon as the board of trustees can organize after the annual election is held, they shall proceed to appoint from their own number, or from the qualified electors of said town, a treasurer, and a clerk and recorder. They shall also appoint a town marshal, a street supervisor and one or more policemen, as they may deem expedient; all of which officers shall hold their office for one year, or until their successors are appointed and qualified, unless sooner removed for cause by the board of trustees; and all except such policemen as may be appointed, shall give bonds as hereinafter provided and required, and shall receive such compensation, including policemen, as the board of trustees may determine upon; *Provided*, That said clerk shall receive for his services as salary a sum not exceeding one hundred and fifty dollars per annum. Said marshal shall receive for his salary a sum not exceeding one hundred dollars per month. Said policemen, if any be appointed, shall each receive a salary not exceeding seventy-five dollars per month. [S. L. 1884, ch. 85, § 5.]

Annual tax.

SEC. 353. Said trustees shall have power to levy and collect an annual tax not exceeding five mills on the dollar in any one year, which shall be devoted to the payment of the actual expenses of the town government for the current year. [S. L. 1884, ch. 85, § 6.]

Manner of conducting elections.

SEC. 354. At the first meeting of the qualified voters, as hereinafter provided, the polls shall be opened at nine o'clock in the forenoon of said day and remain open until four o'clock in the afternoon, when they shall be closed. The voters at such meeting shall first proceed to the election of three inspectors from their number, who, after being duly selected and qualified and having elected one of their number clerk, shall, without delay, proclaim to the meeting that the polls are now open and they are ready to receive the ballots of the voters. The three persons having received the greatest number of votes shall be declared elected trustees as aforesaid, and it shall be the duty of such inspectors to make a certified statement over their own signatures, of the persons selected as such board of trustees and file the same with the register of deeds of Johnson county, within six days of the day of such election. And no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section have been substantially complied with. And it shall be the duty of the register of deeds of Johnson county to make a record of such certified statement. At all elections for trustees the provisions of this section shall be substantially complied with. [S. L. 1884, ch. 85, § 7.]

Notice of elections.

SEC. 355. There shall be at least ten days notice of all regular elections, except the first one, held under the provisions of this chapter, given by the clerk of said town pursuant to order of such board of trustees, in a newspaper, if any be printed in said town, otherwise by posting up notices in three public places therein. [S. L. 1884, ch. 85, § 8.]

Vacancy in elective offices.

SEC. 356. In case of a vacancy occurring in the board of trustees or in the office of mayor, it shall be filled by appointment by the remaining members of such board of trustees at a special meeting of the trustees, called as provided in the next succeeding section, if the unexpired term for which such appointment be made does not exceed three months, otherwise by special election of the qualified electors of said town, called for that purpose as provided in three hundred and fifty-eight. [S. L. 1884, ch. 85, § 9.]

Special meetings of trustees.

SEC. 357. The mayor and two trustees shall have power to call special meetings of the board of trustees, the object of which shall be submitted to the board of trustees in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk. [S. L. 1884, ch. 85, § 10.]

Special elections.

SEC. 358. Special meetings and elections of the qualified voters of said town may be called by the clerk by the order of the trustees of said town, by giving five days notice thereof in a newspaper, if any be printed in said town, otherwise by posting up such notice in three public places therein; and such notice shall state the object for which such meeting or election is called. [S. L. 1884, ch. 85, § 11.]

Qualifications of voters.

SEC. 359. No person shall be deemed a qualified voter and entitled to vote at any election held under the provisions of this chapter who has not been a *bona fide* resident of said town three months immediately preceding the election at which he offers to vote, nor unless he or she possess all the other qualifications of a voter prescribed by the election law of this territory, nor against whom there are any delinquent municipal taxes due and unpaid. [S. L. 1884, ch. 85, § 12.]

Time of opening and closing polls.

SEC. 360. At all municipal elections in said town the polls shall be opened at nine o'clock in the forenoon of said day and not closed until four o'clock in the afternoon of said day. [S. L. 1884, ch. 85, § 13.]

Inspectors of elections, how governed.

SEC. 361. The inspectors of the elections held under the provisions of this chapter, in the receiving and canvassing of votes shall be governed by the laws then existing, so far as they are applicable for the election of members of of the legislative assembly. [S. L. 1884, ch. 85, § 14.]

Appointment of inspectors.

SEC. 362. At all elections held under the provisions of this chapter, except the first one, a board of three persons, appointed by the board of trustees out of their own number or from the qualified voters of said town, as they may deem proper, shall act as inspectors of such elections. [S. L. 1884, ch. 85, § 15.]

Regular meetings of trustees.

SEC. 363. Regular meetings of the board of trustees shall be held on the first Monday in each month, and such other meetings may be held from time to time as by adjournment or resolution they may direct. [S. L. 1884, ch 85, § 16.]

Oath of officers.

SEC. 364. The mayor and all other officers elected or appointed under the provisions of this chapter, shall, within five days after such election or appointment, take and subscribe before some person authorized to administer the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices. [S. L. 1884, ch. 85, § 17.]

Duties of mayor—Casting vote.

SEC. 365. The mayor shall preside at all meetings of the board of trustees, and in his absence a mayor *pro tem.* shall be selected from the board of trustees, who shall preside at such meeting, and shall have a casting vote when there is a tie vote, and none other; and shall have the superintending control of all the officers and affairs of the town, and shall take care that the ordinances of the town, and this chapter, are complied with. The mayor shall commission all officers appointed or elected. [S. L. 1884, ch. 85, § 18.]

Warrants, how signed and attested.

SEC. 366. The mayor shall sign all orders and drafts drawn upon the treasurer for money, and require the clerk to attest the same and affix thereto the seal of the town, and keep an accurate record thereof in a book to be provided for that purpose. [S. L. 1884, ch. 85, §19.]

Approval and veto of mayor.

SEC. 367. The mayor shall have power to sign or veto any ordinance passed by the board of trustees; *Provided*, That any ordinance vetoed by him may be passed over his veto by a vote of three of the members of the board of trustees elected, or by a vote of two-thirds of the members of said board, if the number thereof shall at any time be increased to more than three, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance or return the same with his objections in writing, at the next regular meeting of the board of trustees, the same shall become an ordinance without his signature. [S. L. 1884, ch, 85, § 20.]

Advisory powers of mayor.

SEC. 368. He shall from time to time communicate to the board of trustees such information and recommend such measures, as in his opinion may tend to the improvement of the finances of the town or the police, health, security, ornament, comfort and general prosperity of the town. [S. L. 1884, ch. 85, § 21.]

Officers to exhibit accounts, etc., on mayor's request.

SEC. 369. The mayor shall have power, whenever he deems it necessary, to require any officer of the town to exhibit his accounts or other papers, and to make a report to the board of trustees in writing touching any subject or matter he may require pertaining to his office. [S. L. 1884, ch. 85, § 22.]

Police justice—Jurisdiction—Fees.

SEC. 370. It shall be the duty of the board of trustees to designate one justice of the peace, resident of the town of Sheridan, who shall be styled police justice, and who shall have exclusive jurisdiction to hear and determine all cases arising under the ordinances of said town, and the practice before such justice in police cases shall conform as nearly as may be to the provisions of the justice's code concerning complaints, continuances, trials of causes and appeals, but no change of venue shall be granted in any case arising under the ordinances of said town. There shall be allowed to such police justice such fees as are allowed to justices of the peace under the laws of the territory, unless otherwise provided by ordinance, [S. L. 1886, ch. 40, § 1.]

Penalties for municipal offenses.

SEC. 371. Any person convicted before such police justice shall be punished by such fine and imprisonment as may be regulated by ordinance: *Provided*, No fine shall be greater for any one offense than one hundred dollars, recoverable with costs, and no imprisonment for a longer time than three months. [S. L. 1884, ch. 85, § 24. S. L. 1886, ch. 40, § 2.]

Mayor may remit fines.

SEC. 372. The mayor shall have power to remit the whole or any part of fines and forfeitures imposed for offenses arising under the ordinances of the town. [S. L. 1884, ch. 85, § 25.]

Appeals from police justice.

SEC. 373. Appeals from judgment or sentence of the police justice may be taken to the district court in the same manner as is now provided by law for appeals from justices' courts in criminal cases, and shall be dealt with by the courts as criminal cases. [S. L. 1884, ch. 85, § 26. S. L. 1886, ch. 40, § 1.]

Contempts.

SEC. 374. The police justice shall have the same power to punish for contempt as justices of the peace have in like cases. [S. L. 1884, ch. 85, § 27. S. L. 1886, ch. 40, § 2.]

Specific corporate powers.

SEC. 375. Said town in its corporate capacity is authorized and empowered to enact ordinances not repugnant to the act organizing the Territory of Wyoming or the laws of said territory, for the following purposes, in addition to the other powers granted by this chapter;

Fire regulations.

First— To organize fire companies, hook and ladder companies; to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to compel owners of buildings to provide ladders and fire-buckets, which are hereby declared to be appurtenances to the real estate and exempt from execution, seizure or sale; to regulate the storage of gun-powder, kerosene and other dangerous material; to direct the construction of a place for the safe deposit of ashes, and may under an order by them entered upon the proper book of the board, visit or appoint one or more fire wardens to visit and examine at all reasonable hours, dwelling houses, lots, yards, enclosures, and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stove-pipes; to prevent out-fires and the use of fire-works and the discharge of fire-arms within the limits of said town, or such parts thereof as they may deem proper; to compel the inhabitants of said town to aid in the extinguishment of fires, and prevent its communication to other buildings under such penalties as may be provided by ordinances adopted by said trustees; to construct and preserve reservoirs, wells, pumps and other water-works, and to regulate the use thereof, and generally to establish other measures of prudence for the prevention and extinguishment of fires as they may deem proper;

Nuisances.

Second—To declare what shall constitute a nuisance, and to prevent, abate and remove the same and take such measures for the preservation of the public health as they may deem necessary;

Control of animals running at large—Dog tax.

Third—To regulate, restrain and prohibit the running at large of cattle, horses, hogs, mules, sheep, goats, dogs and other animals, within said town, and to cause such as may be running at large contrary to ordinance to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition or regulation, and the expense of impounding and keeping the same, and of such sale; to regulate and provide for taxing the owners of dogs found at large contrary to any ordinance regulating the same, and to provide for the extermination of all such dogs for which the tax shall not be paid;

Pounds.

Fourth—To provide for the erection of all needful pens, pounds and buildings for the use of the town, within or without the town limits; to appoint and compensate keepers thereof, and to establish and enforce rules governing the same;

Control of gambling and immorality—Liquor licenses.

Fifth—To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame and other disorderly houses and practices within said town, or within one mile of the outer boundaries thereof; to license and regulate or forbid the sale of spirituous and intoxicating liquors within said town or within one mile of the outer boundaries thereof, and such license shall clearly state upon its face the conditions of such license;

Licenses.

Sixth—To license, regulate or prevent auction establishments, traveling peddlers and public exhibitions within the corporation;

Licenses.

Seventh—To levy and collect a license tax on billiard tables, bowling alleys and other games and gaming tables, drays, hacks, carriages, omnibuses, carts, wagons, and other vehicles used within said town for pay;

Public peace.

Eighth—To prevent and restrain riots, routs, noises, disturbances or disorderly assemblies in any street, house or place in the town; to regulate, punish and prevent the discharge of fire-arms, rockets, powder, fire-works or any other dangerously combustible material; in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate and punish the carrying of concealed weapons; to arrest, regulate, punish, fine or set to work all vagrants and persons found in said town without visible means of support or some legitimate business; to close all places of business on the Sabbath day, commonly called Sunday, and all desecration thereof; to prevent all kinds of public indecencies, and to prohibit and suppress the sale of spirituous and intoxicating liquors on any day of municipal, county or territorial election;

Control of public highways and improvements.

Ninth—To lay out, open, widen, extend, grade or otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair, and vacate the same. For making and repairing sidewalks the assessment shall be made on all lots and pieces of ground abutting on the improvement according to the front foot thereof. For the purpose of laying out, opening, widening, extending, grading and otherwise improving the streets, alleys, sewers and crossings, and keeping them in repair, the board of trustees shall have power to require by ordinance every able-bodied male citizen within the corporation over the age of twenty-one years of age and less than fifty years of age, to work, or furnish, two days work upon said streets, alleys, sewers or crossings, or pay into the treasury of said town in lieu thereof a sum not exceeding four dollars;

Street obstructions.

Tenth—To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys and other town property, and to prevent and punish horse racing, fast driving or riding in the streets, highways, alleys, bridges or other places in town, and all games, practices or amusements therein likely to result in damage to any person or property; to regulate, prevent and punish the riding, driving or passing of horses, oxen, mules, cattle or other teams, or any vehicle drawn thereby, over, upon or across sidewalks or along any streets of the town;

Quarantine regulations.

Eleventh—To make regulations to prevent the introduction and spreading of contagious diseases within the town; to make quarantine laws for that purpose and enforce the same within two miles of the town;

Hospitals, poorhouse, etc.

Twelfth—To erect, establish and regulate hospitals, workhouses and poorhouses, and provide for the government and support of the same;

Public health and water supply.

Thirteenth—To make regulations to secure the general health of the town and to provide the town with water;

Insurance.

Fourteenth—To insure the public property of said town;

Planting trees in streets, etc.

Fifteenth—To plant trees upon the public grounds and along the streets of said town and provide for their culture and preservation and to enclose any public square or any public grounds within said town;

Owning real estate out of town.

Sixteenth—To purchase, hold and pay for, in the manner herein provided, lands outside of the limits of said town, for the purpose of the burial of the dead, and all necessary grounds for hospital grounds, and water works, also for the storage and conducting of water;

Cemeteries.

Seventeenth—To survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds, and the avenues leading thereto, owned by such town; to construct walks therein, rear and protect ornamental shade trees therein, and to provide for paying the expenses thereof;

Conveyance of cemetery lots.

Eighteenth—To convey cemetery lots owned by such town, by certificate, signed by the mayor and countersigned by the clerk, under seal of the town, specifying that the person to whom the same is issued is owner of the lot or lots described therein, by number, as laid down on such map or plat, for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot or lots for the sole purpose of interment, under the regulations of the board of trustees, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof;

Control of cemeteries.

Nineteenth—To limit the number of lots which shall be owned by the same person at the same time; to prescribe rules for enclosing and adorning and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, any improper adornment thereof, but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots;

Regulation of cemeteries and other city property.

Twentieth—To pass rules and ordinances imposing fines and penalties not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof and trespassers therein, and to pass rules and ordinances for the protection of lands and ditches used for water purposes, hospitals and pesthouses outside of the city limits, and the officers of such towns shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the town itself;

Taxation.

Twenty-first—To levy and collect taxes for general revenue purposes, not exceeding five mills on the dollar in any one year, on all real, personal and mixed property within the limits of said town, taxable under the laws of the territory; and the assessment, levy and collection of taxes shall be made as hereinafter provided or as may be further provided by ordinance;

Police regulations.

Twenty-second—To regulate the police of the city, and to enact fines and penalties for violations of this chapter, or of any by-law or ordinance by them established, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment until the amount of said judgment and costs shall be paid; *Provided*, That the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required for such license;

Bonds of officers.

Twenty-third—To require from all officers and servants elected or appointed, to give bonds and security for the faithful performance of their duties;

Public wells.

Twenty-fourth—To establish, make and regulate public wells, cisterns and reservoirs and aqueducts and to provide for filling the same;

Appropriating money.

Twenty-fifth—To appropriate money and provide for the payment of the debts and expenses of the town; *Provided*, That all moneys, however derived, belonging to such corporation, shall only be appropriated for such objects and defraying such expenses as accrue or necessarily arise in the exercise of powers granted by this chapter, and no appropriation shall be made without an order to that effect, entered upon a proper book kept for that purpose by such board of trustees; *And provided, further*, That no appropriation shall be made unless there be money not otherwise appropriated in the treasury at the time of making such appropriation;

Publication of financial statement.

Twenty-sixth—The board of trustees shall cause to be published, once in six months, a statement of the financial condition of the town, which statement shall be verified by the oath of the mayor, treasurer and clerk, and such publication shall be in a newspaper, if any be published in said town, otherwise by posting up the same in three public places within the town;

Town attorney.

Twenty-seventh—To employ an attorney to draft ordinances and other legal documents relating to the affairs of the corporation and employ counsel in all cases by them deemed necessary, and pay for the same such reasonable amounts as may be agreed upon, and whenever, by them deemed necessary, appoint and employ a town attorney, whose duties and compensation shall be such as may be provided by ordinance. [S. L. 1884, ch. 85, § 28.]

Passage and recording of by-laws and ordinances.

SEC. 376. All by-laws and ordinances shall be passed pursuant to such rules and regulations as the board of trustees may provide, and shall, within a reasonable time after passage, be recorded in a book kept for that purpose, and shall be signed by the mayor and attested by the clerk. On the passage of any by-law, ordinance or resolution the ayes and nays shall be taken and entered on the journal. [S. L. 1884, ch. 85, § 29.]

Style of ordinances—Publication.

SEC. 377. The style of the ordinances shall be: "Be it ordained by the board of trustees of the town of Sheridan." Every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in three public places at least ten days before the same shall take effect. [S. L. 1884, ch. 85, § 30.]

Complaint to recover fines.

SEC. 378. In actions brought to recover any penalty or fine incurred under this chapter or under the by-laws or ordinances made in pursuance thereof, it shall not be necessary to file with the affidavit or complaint a copy of the ordinances or by-laws or section thereof charged to have been violated, but it shall be sufficient to recite in the affidavit or complaint the number of the section charged to have been violated, with the date of its adoption. [S. L. 1884, ch. 85, § 31.]

Commitment and employment of offenders.

SEC. 379. If the penalty or fine in which judgment is obtained is not paid or replevied, the defendant may be committed for any period not exceeding three months to the workhouse of said town, or if said town have no workhouse then to the county jail or prison in which said town is situate, or in the town calaboose, or such other place of security as may be provided by the board of trustees, or in default of payment of such judgment and costs, the defendant may be adjudged and required to pay the same by manual labor in the work-house or prison or upon the streets or other public works of said town, under the control of the marshal of said town, for which labor the defendant shall be allowed on such judgment and costs one dollar per day. It shall be the duty of such marshal to work such defendant not less than eight hours nor more than ten hours per day, according to the season, and each evening to return such defendant to the custody of the keeper of such prison, workhouse or other place of confinement; and upon the full payment of such judgment and costs said defendant shall be fully discharged. [S. L. 1884, ch. 85, § 32.]

Prosecution for municipal offenses.

SEC. 380. Any person violating the provisions of this chapter or any ordinance or by-law made in pursuance thereof, to which there may be a penalty attached, may be prosecuted before the police justice upon warrant issued by such police justice as in case of misdemeanor, and such person, upon conviction, shall stand committed until the fine and costs be paid or replevied according to the provisions of the next preceding section. [S. L. 1884, ch. 85, § 33; S. L. 1886, ch. 40, § 2.]

Proof of municipal organization.

SEC. 381. Whenever any suit shall be instituted by said town in any of the courts of this territory, said town shall not be required to show its compliance with the provisions of this chapter as to its organization or publication of its by-laws or ordinances, unless the same be controverted by affidavit. [S. L. 1884, ch. 85, § 34.]

Ordinances, how proved.

SEC. 382. All ordinances of the town may be proved by the certificate of the clerk, under the seal of the town, and when printed or published in book or pamphlet form, and purporting to be published by authority of the town, shall be read and received in all courts and places withhut further proof. [S. L. 1884, ch. 85, § 35.]

Recovery and disposition of fines.

SEC. 381. All actions brought to recover any penalty or fine incurred under this chapter, or by-laws and ordinances made in pursuance thereof, shall be brought in the corporate name of the town, and the recoveries upon the same, when collected, shall be paid into the treasury of said town; the process in every such action shall be a warrant, and the person named in such warrant shall be arrested and forthwith taken before the police justice for trial. [S. L. 1884, ch. 85, § 36. S. L. 1886, ch. 40, § 2.]

Trustees' meetings—Journal.

SEC. 384. The board of trustees shall keep a journal of all their proceedings and all their meetings shall be public. [S. L. 1884, ch. 85, § 37.]

Presentation and verification of claims against town.

SEC. 385. No account or claim against said town shall be audited or allowed by the board of trustees unless it be made out fully itemized and properly subscribed and sworn to, and every such account shall be numbered from one upwards, in the order of their presentation, and a memorandum of the same entered upon a book to be kept exclusively for that purpose. [S. L. 1884, ch. 85, § 38]

Payment of claims.

SEC. 386. No account or claim shall be paid unless properly subscribed and sworn to, audited and allowed by the board as aforesaid; and no money shall be drawn from the treasury except upon a warrant drawn upon the treasurer, signed by the mayor and attested by the clerk. [S. L. 1884, ch. 85, § 39.]

Limitation on municipal indebtedness.

SEC. 387. The town incorporated by this chapter shall not have power to borrow money or incur any debt or liability unless the citizen owners of five-eighths of the property taxable in such town as evidenced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan; and any such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same, and for any debt created thereby the trustees shall add to the tax duplicate of each year, successively, a levy sufficient to pay the annual interest on such debt or loan, with an addition to create a sinking fund for the liquidation of the principal thereof; *Provided*, That in no case shall the levy for such purposes exceed two mills on the dollar in any one year. [S. L. 1884, ch. 85, § 40.]

Officers shall give bonds.

SEC. 388. The clerk, assessor, treasurer, marshal and street supervisor shall, within ten days from the date of their appointment or election, each and severally, give bonds, payable to the Territory of Wyoming, with two sufficient sureties, to such an amount as the board of trustees shall direct, but the bonds of the treasurer shall not be less than double the amount of the estimated tax duplicate for the current year. [S. L. 1884, ch. 85, § 41.]

Delivery of corporate property to successors.

SEC. 389. All books and vouchers, together with all money and other property belonging to the corporation, and in the charge or possession of any officer of the same, shall be delivered to his successor when qualified. [S. L. 1884, ch. 85, § 42.]

Amount of annual tax, when determined.

SEC. 390. The board of trustees shall, before the third Tuesday of April of each year after the town shall have been incorporated, determine the amount of general tax for the current year. [S. L. 1884, ch. 85, § 43.]

Duties of assessor.

SEC, 391. The assessor shall assess all property liable to taxation within the corporate limits of said town at its true cash value, and shall make returns of his assessment roll to the board of trustees on or before the fifteenth day of April of each year, and shall receive for his services as such assessor six dollars per day for the time actually employed in making said assessment. [S. L. 1884, ch. 85, § 44.]

Board of equalization.

SEC. 392. The board of trustees and assessor of the town shall constitute a board for the equalization of the assessment of the several persons in the town, substantially in the same manner as is required of the county boards of equalization, and they shall hold a special meeting at the office of the town clerk in the town of Sheridan within five days after the return of the assessment roll in each year, and shall have the right to adjourn such meeting from day to day for not more than three days; and at such meeting they shall add to said assessment roll any taxable property in the town not included in the assessment as returned by the assessor, and shall assess the value thereof, and shall hear and determine the complaints of all persons feeling aggrieved by the assessment of their property as returned by the assessor, and for the purpose of equalizing the assessment roll may increase, diminish or otherwise alter and correct any assessment: *Provided*, It shall be the duty of the clerk of the board of trustees to give notice to each person, company or corporation whose assessment has been raised by the board of equalization, stating the amount of such raise or increase of assessment as aforesaid. Such notice may be given by personal service or by statement either written or printed, postage prepaid by mail, properly addressed to such person, company or corporation, or to the agent or agents or attorney, or any of them, of such person, company or corporation, either of whom may appear before the board of equalization at their next regular meeting, to be held within ten days of adjournment of first meeting, and upon evidence satisfactory to the board of equalization that the assessment or any part thereof is unjust or more than the actual cash value of such property so assessed, the said board shall reduce such assessment in accordance with the facts established by the evidence introduced, or such claims may be presented at the next annual meeting of the board of equalization, when said board may abate such tax in proportion to such unjust, erroneous assessment: *Provided*, It is evident to such board that no part of such claimant's taxable property has been omitted or undervalued in the original assessment, or by the board of equalization for the year or years for which such claim or claims are made. Said officers, together with the assessor, while sitting as such board of equalization, shall receive three dollars per day, not exceeding three days. [S. L. 1884, ch. 85, § 45.]

Tax levy.

SEC. 393. When the assessment roll shall have been corrected and completed, the trustees shall levy a tax upon the taxable property situate within the corporate limits of said town not exceeding five mills on the dollar in any one year, and shall set opposite the name of each person taxed, a description and valuation of the property charged therewith, and the amount of the tax assessed against such person; and when such tax list shall have been made they shall cause a copy thereof, with a warrant annexed, to be delivered to the treasurer of said town. [S. L. 1884, ch. 85, § 46.]

Tax warrant—Tax liens.

SEC. 394. Such warrants shall be under the seal of the corporation, and be signed by the mayor and trustees, or a majority of them, and attested by the clerk, and shall command the treasurer to collect the taxes specified in his duplicate within sixty days and make return of such warrant. The lien for taxes for corporation purposes shall attach to all property owned by each person subject to taxation under this chapter from the day the tax list or duplicate and warrant comes into the hands of the treasurer. [S. L. 1884, ch. 85, § 47.]

Collection of taxes—Penalty—Tax deed.

SEC. 395. It shall be the duty of the treasurer to immediately proceed and collect the taxes on said duplicate by advertising for four successive weeks in a newspaper, if any be printed in said town, otherwise by posting up notices in three public places therein, the fact that said taxes are due and personally calling upon each and every person or corporation so taxed, and demanding the same, except as to non-residents, to whom he shall mail a notice as aforesaid, *postage prepaid, to his last known address; and in the event that any* portion of said tax so assessed and levied shall remain unpaid at the expiration of thirty days from the date of the first advertisement or of the posting up of notices as above provided, it shall be the duty of said treasurer, and he shall have power to collect the same with ten per centum additional upon said amount as a penalty for so failing to pay said tax, and also all legal costs incurred in making said collections, in the manner and in accordance with the provisions of the revenue laws of the territory for the collection of territorial and county revenue, except in regard to the time of making the distraint of property necessary to enforce the collection of said tax, which time shall, for the purpose of collecting this tax, be deemed to commence with the expiration of the thirty days hereinbefore referred to. All deeds or conveyances for lands so sold for taxes shall be *prima facie* evidence of the validity of such purchase. [S. L. 1884, ch. 85, § 48.]

Accounts and compensation of treasurer.

SEC. 396. The treasurer of said town shall so keep his accounts as to show when and from what sources all moneys paid to him have been derived, and to whom and when such moneys, or any part thereof, have been paid; his books, accounts and vouchers shall at all times be subject to examination by said board of trustees, or any citizen of said town, and it is hereby made the duty of the board of trustees to examine the same at regular meetings of such board on some day between the first and last Monday of March of each year, and have settlements with said treasurer. Said treasurer shall receive as compensation for his services, for all moneys collected as provided in the last preceding section, five per cent.; for all other moneys coming into his hands one per cent. for receiving the same, except such money as shall be turned over to him by his predecessor in office, and one per cent for disbursing, except such money as shall be turned over by him to his successor in office. [S. L. 1884, ch. 85, § 49.]

Publication of annual statement.

SEC. 397. It shall be the duty of the board of trustees immediately after the annual settlement with the treasurer, to publish in a newspaper, if one be printed in said town, or if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the source of such receipts, and what appropriations were made, for what object, and the specific amount of each. [S. L. 1884, ch. 85, § 50.]

Town warrants.

SEC. 398. All warrants on the treasury shall have specified therein the services or indebtedness for which the same are drawn, and shall be redeemed in regular order of registration on the treasurer's books. [S. L. 1884, ch. 85, § 51.]

Duties of clerk.

SEC. 399. It shall be the duty of the clerk to keep the corporate seal, papers and books belonging to said town; to attend the sittings of the board of trustees, and to keep a journal of all their proceedings; also to keep a record of all ordinances passed by the board of trustees, which journal and record, after the approval of each sitting of the board, shall be signed by the mayor and attested by the clerk; to issue all licenses authorized by this chapter upon the presentation of the receipt of the treasurer that the money therefor has been paid to said treasurer; to attest all warrants, bonds and licenses issued in pursuance of the orders and ordinances of the trustees; affix the corporate seal thereto; to keep an account, in a suitable book, under appropriate heads, of all warrants drawn on the treasury; an account of all licenses issued, date of issue and amount, and shall perform all other duties appertaining to his office and required of him by the by-laws. [S. L. 1884, ch. 85, § 52.]

Powers of marshal.

SEC. 400. The marshal of said town shall possess the same powers and be subject to the liabilities possessed and conferred by statute upon constables, 9

in executing the orders of the trustees, or in enforcing the by-laws and ordinances of said town. [S. L. 1884, ch. 85, § 53.]

Duties of street supervisor.

SEC. 401. It shall be the duty of the street supervisor to superintend the opening, widening, grading and improving of streets, avenues, alleys or lanes within the limits of the corporation, and the building and repairing of sidewalks therein; the paving, curbing and guttering of all streets and avenues, and the filling of the same; the building of bridges, culverts and foot walks across the streets; all improvements of the squares, or areas formed by the crossing of streets within the corporation; the grading, fencing, ornamenting and other improvement of all burial and cemetery grounds, and the avenues leading thereto, owned by such town; the construction of walks therein and the rearing and protecting of ornamental shade trees therein, and see that none of the provisions of ordinances relating to burial and cemetery grounds are violated, and report all such violations to the board of trustees; to see that the provisions of this chapter concerning the working upon the streets by the male citizens of said town are complied with, and collect and receipt for all moneys paid in lieu thereof, and pay over the same into the treasury of said town; also perform the duties required of the marshal by section three hundred and seventy-nine, in reference to the working upon the streets of persons convicted of violations of this chapter or of by-laws and ordinances passed under the provisions of this chapter, and perform all other duties relating to his office and required of him by the trustees or by ordinance. [S. L. 1884, ch. 85, § 54.]

Duties of fire wardens.

SEC. 402. The fire wardens shall attend all fires and give their personal superintendence to extinguishing the same, and do all other acts required by the by-laws and obey all orders given by the board of trustees in relation to the fire department; the trustees shall, by virtue of their office, be fire wardens. [S. L. 1884, ch. 85, § 55.]

Jurisdiction of trustees—Additions to towns.

SEC. 403. The trustees shall have jurisdiction over any commons, public grounds or other property belonging to said town, and shall have power to annex to said town contiguous territory thereto upon the written application of the owner or owners of such contiguous territory; and when said territory be so annexed it shall be a part of said town, subject to all the provisions of this chapter. [S. L. 1884, ch. 85, § 56.]

Powers of policemen.

SEC. 404. The policemen of the said town shall have power to arrest all offenders against all the laws of the territory or town by day or by night, in the same manner as the marshal, and keep them in the city prison or other place to prevent their escape until a trial can be had before the proper officer. [S. L. 1884, ch. 85, § 57.]

Execution of deeds.

SEC. 405. All conveyances of real estate by said town shall be signed by the mayor and have attached thereto the seal of the town and be attested by the clerk. [S. L. 1884, ch. 85, § 58.]

Eminent domain.

SEC. 406. Whenever it shall be necessary for said corporation to use private property for public purposes, the same shall be condemned in the following manner: The board of trustees shall appoint one referee, and the owner or owners of the property so to be condemned shall appoint one referee, and in the event that they two cannot agree in the valuation of the property, they shall select a third, and the estimate of a majority of them of the valuation of the property appraised, shall be the decision of all, which decision shall be final and binding between the parties. [S. L. 1884, ch. 85, § 59.]

Officers to enter upon duties in ten days.

SEC. 407. All officers, either elected or appointed, shall enter upon their respective duties within ten days from the date of their election or appointment. [S. L. 1884, ch. 85, § 60.]

Trustees to control officers.

SEC. 408. The duties, powers and privileges of all the officers connected with the town government, not herein defined, shall be defined by ordinance of the board of trustees. [S. L. 1884, ch. 85, § 61.]

Compensation of officers.

SEC. 409. The compensation, not herein provided for, of the several officers of the town shall be such as may be provided by ordinance. [S. L. 1884, ch. 85, § 62.]

Elections to be by ballot.

SEC. 410. All elections held under the provisions of this chapter shall be by ballot. [S. L. 1884, ch. 85, § 63.]

CHAPTER 11.

RAWLINS CHARTER.

SECTION.
411. Corporate limits and name.
412. General corporate powers.
413. Powers exercised by mayor and trustees.
414. Mayor and trustees—Term of office—Qualifications—Annual elections.
415. Qualifications of electors.
416. Manner of conducting elections.
417. Duties of mayor—Casting vote.
418. Appointive officers—Term of office.
419. Mayor to sign warrants and deeds.
420. Approval and veto of mayor—Advisory powers.
421. Special meetings of trustees.
422. Officers to exhibit accounts, etc., on mayor's request.
423. Vacancy in office of mayor—New election.
424. Mayor may remit fines and grant pardons.
425. Quorum of trustees—Limitation.
426. General powers of mayor and trustees.
427. Appropriation of money.
SECTIONS.
428. Limitation on municipal indebtedness.
429. Enumeration of specific corporate powers.
430. Employment of attorney.
431. Certain license money in Carbon County payable to city.
432. Fees of police justices.
433. Punishment by fine and imprisonment.
434. Appeals from police justice.
435. Contempt of police court.
436. Powers of marshal.
437. Powers of policemen.
438. Marshal and police, to whom subject.
439. Powers of officers.
440. Compensation of officers.
441. Misconduct of officer—Penalty.
442. Election—Challenges—Oath of elector.
443. Oath of officers.
444. Transfer of property to city from Carbon County.

Corporate limits and name.

SEC. 411. All that portion of the territory of Wyoming in the county of Carbon, comprising sections sixteen, seventeen, twenty and twenty-one, in township twenty-one north of range eighty-seven west of the sixth principal meridian, under and by the name of the City of Rawlins, together with all the additions that may be hereafter made thereto according to law, is hereby declared to be a corporation by the name of the City of Rawlins. [S. L. 1886, ch. 116, § 1.]

General corporate powers.

SEC. 412. The said City of Rawlins is hereby made a body corporate and politic, and invested with all the powers and attributes of a municipal corporation, and shall have power to sue and be sued, to purchase and hold real and personal property for the use of the city, to sell and convey any real and personal property and to make such orders respecting the same as may be conducive to the interests of the city; to make all contracts and do all other acts in relation to the property and affairs of the city necessary to the exercise of its corporative and administrative powers; to have and use a corporate seal and to alter the same at pleasure; to exercise such other and further powers as are or may be conferred by law. [S. L. 1886, ch. 116, § 2.]

Powers exercised by mayor and trustees.

SEC. 413. The powers hereby granted shall be exercised by a mayor and board of trustees, consisting of three members, [S. L. 1886, ch. 116, § 3.]

Mayor and trustees—Term of office—Qualifications—Annual elections.

SEC. 414. The mayor of said city shall be elected for the term of one year, and shall hold his office until his successor is duly elected and qualified. At the first election under this charter, there shall be elected three trustees, one of whom shall hold his office for a term of three years, one for two years, and one for one year, and until their successors are elected and qualified. The first election under this charter shall be held on the second Tuesday in April, eighteen hundred and eighty-six, and thereafter an annual election shall be held on the second Tuesday in April in each year. At each annual election after said first election there shall be elected a mayor to serve one year, and one member of the board of trustees to serve three years. At such annual election the polls shall be opened at nine o'clock a. m. and remain open until four o'clock p. m. No person shall be eligible to the office of mayor or trustee who is not a resident freeholder of said city at the time of his election, and does not possess all the qualifications required of electors under this charter. [S. L. 1886, ch. 116, § 4.]

Qualifications of electors.

SEC. 415. Every legal voter of this territory who shall have been a *bona fide* resident of said city three months next preceding any city election, shall be qualified to vote therein at such election. [S. L. 1886, ch. 116, § 5.]

Manner of conducting elections.

SEC. 416. The mayor and three trustees shall be elected in the same manner as provided by law in the election of county and precinct officers. At the first meeting of the board of trustees, held after the first election under this chapter, the three trustees, so chosen, shall draw lots to decide the length of the terms during which they shall respectively hold the offices of trustees, as provided in section four hundred and fourteen. [S. L. 1886, ch. 116, § 6.]

Duties of mayor—Casting vote.

SEC. 417. The mayor shall preside at all meetings of the board of trustees, and shall have a casting vote when the board of trustees are equally divided, and none other, and shall have a superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and this chapter are complied with and strictly enforced. The mayor shall commission all officers appointed or elected. [S. L. 1886, ch. 116, § 7.]

Appointive officers—Term of office.

SEC. 418. There shall be a city treasurer, a city clerk, who shall be ex-officio city assessor, a city marshal, who shall be ex-officio collector of city taxes and such policemen as may be required, all of which officers shall be appointed by the mayor, by and with the consent of the board of trustees, and each of whom shall hold his office for the term of one year and until his successor is duly appointed and qualified; *Provided*, That any of said officers may be sooner removed for cause by the mayor, the board of trustees concurring. [S. L. 1886, ch. 116, § 7.]

Mayor to sign warrants and deeds.

SEC. 419. The mayor shall sign all warrants and drafts upon the treasury for money, and require the city clerk to attest the same and affix thereto the seal of the city, and keep an accurate record thereof, in a book to be provided for that purpose. And all conveyances of real estate by said city shall be signed by the mayor and have attached thereto the official seal of the city and be attested by the city clerk. [S. L. 1886, ch. 116, § 8.]

Approval and veto of mayor—Advisory powers.

SEC. 420. The mayor shall have power to sign or veto any ordinance passed by the board of trustees; *Provided*, That any ordinance vetoed by him may be passed over his veto by an unanimous vote of the trustees elected; and should the mayor refuse to sign any proposed ordinance or return the same with his objections in writing at the next regular meeting of the board of trustees; the same shall become an ordinance without his signature. The mayor shall, from time to time, communicate to the board of trustees such information and recommend such measures as, in his opinion, may tend to the improvement of the finances of the city, the police, health, security, ornaments, comfort, and general prosperity of the city. [S. L. 1886, ch. 116, § 10.]

Special meetings of trustees.

SEC. 421. The mayor and two trustees shall have power to call special meetings of the board of trustees, the object of which shall be stated in writing, and shall be entered upon the journal by the clerk, and each member of the board of trustees shall be served with a notice of such special meeting at least two days before such meeting shall be held. [S. L. 1886, ch. 116, § 11.]

Officers to exhibit accounts, etc., on mayor's request.

SEC. 422. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make a report to the board of trustees, in writing, touching any subject or matter pertaining to his office. [S. L. 1886, ch. 116, § 12.]

Vacancy in office of mayor—New election.

SEC. 423. When any vacancy shall happen in the office of mayor, by death, resignation, removal from the city, refusal to qualify, or otherwise, the president of the board of trustees, for the time being, shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, until such vacancy is filled; or in case of the temporary absence, until the mayor shall return. And in case of such vacancy, other than temporary absence or disability, the person exercising the office of mayor shall cause a new election to held, giving ten days notice thereof by proclamation. [S. L. 1886, ch. 116, § 13.]

Mayor may remit fines and grant pardons.

SEC. 424. The mayor shall have power to remit fines and grant reprieves and pardons for all offenses arising under the ordinances of said city. [S. L. 1886, ch. 116, § 14.]

Quorum of trustees—Limitation.

SEC. 425. A majority of the board of trustees shall constitute a quorum to transact business, but no action of the board of trustees, by which money may be withdrawn from the treasury, or contract made which will bind the city in the future, shall be taken, unless such action receive the affirmative vote of a majority of all the trustees elected. [S. L. 1886, ch. 116, § 15.]

General powers of mayor and trustees.

SEC. 426. The mayor and board of trustees shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances, not repugnant to the laws of the territory, and such as shall be deemed expedient for the good government of the city, the preservation of peace and good order, the suppression of vice and immorality, the benefit of trade, the health of the inhabitants of the city, and such other rules, ordinances, and regulations as may be necessary to carry such power into effect, not inconsistent with law. [S. L. 1886, ch. 116, § 16.]

Appropriation of money.

SEC. 427. All moneys, however derived, belonging to such corporation, shall be only appropriated for such objects, and the defraying of such expenses as shall accrue or necessarily arise in the exercise of the powers granted by this chapter. No appropriation shall be made without an order to that effect entered upon a proper book kept for that purpose by such board of trustees; *Provided*, That no appropriation shall be made unless there be money not otherwise appropriated in the treasury at the time of making such appropriation; and any violation of the provisions of this section on the part of the trustees of said City of Rawlins, shall be deemed a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars, and imprisonment of not more than six months, or both such fine and imprisonment, in the discretion of the court. [S. L. 1886, ch. 116, § 17.]

Limitation on municipal indebtedness.

SEC. 428. The city incorporated by this act shall not have power to borrow money or incur any debt or liability, unless the citizen owners of two-thirds of the taxable property of such city, as evidenced by the assessment roll of the preceding year, petition the board of trustees to contract such debt or loan; and such petition shall have attached thereto an affidavit verifying the genuineness of the signature to the same, and for any debt created thereby the trustees shall add to the tax duplicate of each year, successively, a levy to pay the annual interest on such debt or loan, with an addition to create a sinking fund for the liquidation of the principal thereof; *Provided*, That in no case shall the levy exceed two mills on the dollar in any one year for such purpose. [S. L. 1886, ch. 116, § 18.]

Enumeration of specific corporate powers.

SEC. 429. Said city in its corporate capacity is authorized and empowered to enact ordinances for the following purposes in addition to the other powers granted by this chapter:

Taxation.

First—To levy and collect taxes for general revenue purposes, not exceeding two mills on the dollar in any one year, on all real, personal and mixed property within the limits of said city, taxable under the laws of the territory, the assessment, levy and collection of taxes shall be made as provided by ordinance and for the purpose of compelling payment of taxes, said city shall have power to enforce the same by distress and sale of personal property of the persons assessed, except such as are exempt from taxation; in such case, the tax list shall be sufficient warrant for such distress, and every tax levied by said city, and due upon personal property, is hereby made a lien upon the real property of the owner thereof, and every tax levied and due upon real property is hereby made a lien upon the property assessed from and after the date of the levy of such tax, and the city collector of taxes is empowered to sell lands upon which there may be a lien for taxes, and convey the same to the purchaser as may be provided by ordinance. And all railroad and telegraph property within the limits of said City of Rawlins that by the laws of the territory is assessable for the purposes of county and territorial revenue by the territorial board of equalization shall be assessable by the city assessor for city taxes, the same as other property under this charter. And said city may by ordinance provide for attaching a penalty of ten per centum on all delinquent taxes, and also provide for the time and manner of levying the taxes and collecting the same in said city.

Opening and improving streets.

Second—To open and improve streets, avenues and alleys, make sidewalks and build bridges, culverts and sewers within the city, and for the purpose of paying for the same, shall have power to make assessments in the following manner, to wit:

Assessment for opening, etc., sidewalks.

1. For opening, widening and grading of all streets, avenues and alleys, for building bridges, culverts and sewers, and for foot walks across the streets, the assessment shall be made on all real and personal estate within the corporate limits of the city, not exceeding one mill on the dollar for the purpose in any one year; and such assessment, and levy of such tax may be made at the time the regular annual tax is levied for other purposes;

Special assessment for sidewalks.

2. For making and repairing sidewalks, assessment shall be made on all the lots and pieces of ground abutting on the improvement, according to the front foot thereof, and shall be known as special assessments for improvements, and be subject to the same penalties and collected in like manner as other taxes;

Lighting streets.

Third—To provide for and regulate the lighting of streets and erection of lamp posts;

Licenses.

Fourth—To license, tax and regulate auctioneers, peddlers, taverns, hotels, hawkers, brokers and pawnbrokers, bill-posters and all keepers of shops and places for the sale and purchase of second-hand goods, wares and merchandise, billiard tables, bowling alleys and any game or games not prohibited by the laws of this territory, drays, hacks, carriages, carts and other vehicles used in the city;

Liquor license.

Fifth—To license, restrain, regulate, prohibit and suppress tippling houses, dram shops, and the selling or giving away of any intoxicating or malt liquors by any person within the city, except by persons duly licensed;

Control of gambling and immorality.

Sixth—To regulate or prohibit gambling and gambling houses, bawdy houses, disorderly houses, houses of prostitution and houses where lewd persons assemble for dancing, desecration of the Sabbath day commonly called Sunday, and all kinds of public indecencies;

Quarantine regulations.

Seventh—To make regulations to prevent the introduction of contagious diseases into the city;

Public health and water supply.

Eighth—To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water;

Police.

Ninth—To establish, regulate and support night watch and police, and define the powers and duties of the same;

Public buildings.

Tenth—To provide all necessary buildings for the use of the city;

Elections.

Eleventh—To appoint judges of all elections provided for by ordinance and this chapter for the election of city officers, and prescribing the manner of conducting the same, the returns thereof, for deciding contested elections, and for holding special elections for any purposes herein provided;

Fines and penalties.

Twelfth—To impose fines and penalties for the breach of any ordinance, and also for the recovery and collection of the same, and in default of payment, to provide for confinement in the city prison, or for hard labor upon the streets of the city;

Official bonds.

Thirteenth—To require all officers and servants of the city, elected or appointed, to give bonds for the faithful performance of the duties, such bond to run to the City of Rawlins;

Public wells, etc.

Fourteenth—To establish, make and regulate public wells, reservoirs, cisterns and aqueducts, and provide for filling the same;

Control of animals running at large—Dog tax.

Fifteenth—To regulate the running at large within the city of cattle, horses, hogs, mules, sheep, goats and other animals, and to provide for impounding the same; and to regulate and provide for the taxing of owners of dogs found at large contrary to any ordinance regulating the same, and to provide for the extermination of all dogs for which the tax has not been paid;

Public peace.

Sixteenth—To prevent and restrain any riot, noise, disturbance or dis orderly assemblages, in the streets, house or place within the city;

Vagrants.

Seventeenth—To restrain and punish vagrants and street beggars;

Fast driving.

Eighteenth—To prevent horse racing, fast driving in the streets, and to authorize the arrest of persons immoderately riding or driving therein;

Fire regulations.

Nineteenth—To procure fire engines, hooks, ladders, buckets and other apparatus, and to organize fire companies and to prescribe the duties of the same;

Railway regulations.

Twentieth—To regulate depots, depot grounds, and places for storing freight; to regulate the passage of railways through the streets and public grounds of the city; to regulate the crossing of railway tracks, to regulate the running of railway engines, cars and trucks within the city, and to govern the speed thereof;

Compensation of officers and others.

Twenty-first—To fix the compensation of city officers, and regulate the fees of witnesses, jurors and others for services rendered under this chapter, or any ordinance made in pursuance thereof; *Provided*, That in no case shall such compensation exceed the amounts prescribed in section four hundred and forty;

Public safety.

Twenty-second—To regulate, punish and prevent the discharge of firearms, rockets, powder, fireworks or any dangerous and combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings, and to regulate, prevent and punish the carrying of concealed, dangerous or deadly weapons;

General welfare clause.

Twenty-third—To make all such ordinances, by-laws, regulations, rules and resolutions, not inconsistent with the laws of this territory as may be expedient, in addition to the special powers in this section granted; maintaining the peace, good government and welfare of the city, and its trade, commerce and manufactures, and to enforce all ordinances by inflicting penalties for the violation thereof not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment until the amount of such judgment and costs shall be paid;

Cemeteries.

Twenty-fourth—To make such rules and regulations with regard to improvement, preservation, laying out and ornamenting any grounds for a cemetery without or within the limits of the city, and for the sale of burial places or lots for the interment of the dead therein, and also to provide for the punishment of all persons who shall without or within said city limits be guilty of a violation of any of said rules and regulations;

Appropriation of money.

Twenty-fifth—To appropriate money and provide for the payment of the debts and expenses of the city, under the limitations and provisions of this chapter;

President of the board of trustees.

Twenty-sixth—To elect one of their own body, who shall be styled the "president of the board of trustees," and who shall preside at all meetings of the board of trustees in the absence of the mayor; and the president, when occupying the place of mayor, shall have the same privileges as other members of the board of trustees, and all rights of the president, while so acting, shall be binding upon the board of trustees and upon the city, the same as if done by the mayor;

Publication of financial statement.

Twenty-seventh—The board of trustees shall cause to be published, once in six months, a statement of the financial condition of the city, which statement shall be verified by the oath of the mayor, city treasurer and clerk;

Advertising for proposals—Awarding contract.

Twenty-eighth—Before the board of trustees shall make any contract for building bridges or sidewalks, or for any work or improvements on the streets, they should advertise for bids for the same, in some paper published in said city, for at least two weeks; and the contract shall be let in all instances to the lowest responsible bidder; *Provided*, That they shall have the power to reject any and all bids. After work is performed under contract, no extra compensation shall be allowed by the city;

Presentation and verification of claims against city.

Twenty-ninth—All claims against the city must be presented in writing, with a full account of items and dates thereof, and verified by the oath of the claimant or his agent, that the same is correct, reasonable and just, and no claim shall be audited or allowed unless presented and verified as provided for in this section; *Provided*, That no costs shall be recorded against the city in any action brought against it for any unliquidated claim which has not been presented to the board of trustees to be audited, nor upon claims to be allowed in part, unless recovery shall be for a greater sum than the amount allowed, with interest due;

Fire regulations.

Thirtieth—To regulate the construction of and order the suppression and cleaning of fire-places, chimneys, stoves, stove pipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and to prescribe limits within which dangerous, obnoxious or offensive business may be carried on;

Fire limits and building regulations.

Thirty-first—To prescribe limits within which no building shall be constructed except of stone or brick, or other incombustible material, with fire-proof roof, and to impose a penalty for the violation of such ordinance, and to provide the thickness, strength and manner of constructing stone, brick and other buildings within the fire limits of said city, and construction of fire escapes therein, and to provide for the proper enforcement of the same, by the imposition of the penalty for the violation of any such provisions made by said city, and by abolishing any unauthorized work, and declaring same to be a nuisance, and providing for its abatement. [S. L. 1886, ch. 116, § 19.]

Employment of attorney.

Sec. 430. Said board of trustees may employ an attorney to draft ordinances and other legal documents relating to the affairs of the corporation, and to employ counsel in all cases when they deem the same necessary, and may pay such reasonable amount as may be agreed upon for such legal services, and whenever by them deemed necessary may appoint and employ a city attorney and city physician, whose duties and compensation shall be prescribed by ordinance. [S. L. 1886, ch. 116, § 20.]

Certain license money in Carbon County payable to city.

SEC. 431. All fines and penalties collected, arising from a breach of the ordinances of the city, and all moneys for licenses shall be paid into the city treasury. And hereafter all licenses issued by Carbon County for the sale of liquors or for the owning or keeping of a billiard table or any table used for pool or bagatelle, and all licenses issued by said county for any other game or games not prohibited by the laws of this territory, when the licensee shall be a resident of and carrying on the business for which he is licensed within the corporate limits of the City of Rawlins, the license shall be collected by the city marshal or collecting officer of said City of Rawlins, in addition to the licenses issued by said city for the purposes mentioned in this chapter. It shall be the duty of such collecting officer, between the first and fifteenth day of each month, to pay into the treasury of said city all moneys collected for such licenses, which moneys shall be applied to the general revenue purposes of said city. [S. L. 1886, ch. 116, § 21.]

Fees of police justices.

SEC. 432. The police justices shall be entitled to such fees as may be established by ordinance; *Provided*, That such fees shall not be greater than those allowed to justices of the peace by the laws of the territory. [S. L. 1886, ch. 116, § 22.]

Punishment by fine and imprisonment.

SEC. 433. Any person convicted before a police justice shall be punished by such fine and imprisonment as may be provided by ordinance; *Provided*, That no fine shall be greater than one hundred dollars, and no imprisonment shall be for a longer time than three months. [S. L. 1886, ch. 116, § 23.]

Appeals from police justice.

SEC. 434. Appeals from judgment or sentence in the police court may be taken to the district court in the same manner as is provided by law for appeals from justices' courts in criminal cases, and shall be dealt with by the district courts in the same manner as criminal cases appealed from other justices of the peace in such county. [S. L. 1886, ch. 116, § 24.]

Contempt of police court.

SEC. 435. The police justices shall have the same power to punish for contempt as justices of the peace. [S. L. 1886, ch. 116, § 25.]

Powers of marshal.

SEC. 436. The marshal shall be chief of police, and shall at all times have power to make and order arrests, with proper process, for any offense against the ordinances of the city or laws of the territory, and to arrest in all cases when any offense shall be committed or attempted in his presence. [S. L. 1886, ch 116, § 26.]

Powers of policemen.

SEC. 437. The policemen of said city shall have power to arrest all offenders against the laws of the city or territory, by day or by night, in the same manner as the marshal, and keep them in the city prison or other place to prevent their escape until a trial can be had before the proper officer. [S. L. 1886, ch 116, § 27.]

Marshal and police—To whom subject.

SEC. 438. The policemen in the discharge of their duties shall be subject to the orders of the mayor and the marshal; but the marshal shall be subject to the orders of the mayor only. [S. L. 1886, ch. 116, § 28.]

Powers of officers.

SEC. 439. The duties, powers and privileges of all officers connected with the city government and not herein defined shall be defined by ordinance of the board of trustees. [S. L. 1886, ch. 116, § 29.]

Compensation of officers.

SEC. 440. The compensation of the mayor shall not exceed fifty dollars per annum, and that of the members of the board of trustees shall not exceed twenty-five dollars per annum each, and no extra compensation shall be allowed to any of the said officers. The compensation of the city clerk shall not exceed one hundred and twenty-five dollars per annum as city clerk, but he shall be entitled to receive as city assessor a sum not to exceed five dollars per day for each day actually and necessarily employed in assessing the property of said city, not exceeding ten days. The compensation of the marshal shall not exceed seventy-five dollars per month, each. The treasurer shall receive for his services a sum not to exceed two per centum on all moneys actually received and paid out by him; *Provided*, That he shall not receive any percentage on moneys paid out or turned over to his successor in office. [S. L. 1886, ch. 116, § 30.]

Misconduct of officers—Penalty.

SEC. 441. Any officer of said city who shall do any act prohibited by this charter, or who shall fail to do any act or duty required of such officer by this charter or any ordinance of said city, shall, on conviction, be punished by a fine not exceeding three hundred dollars, or imprisonment in the county jail not to exceed six months, or both, in the discretion of the court. [S. L. 1886, ch. 116, § 31.]

Elections—Challenges—Oath of Elector.

SEC. 442. The board of trustees shall provide by ordinance for holding all after the first election provided for in this chapter, for the appointment of judges and clerks, who shall be duly qualified electors of said city.

Each of said judges and clerks of election shall take and subscribe an oath or affirmation in writing, to faithfully and impartially discharge the duties of such judges and clerks of election; such oath may be administered by any officer authorized to administer oaths under the laws of this territory.

If any person offering to vote at any election shall be challenged as unqualified by the judges or clerks of election, or by any qualified elector of said city, the judges shall declare to the person so challenged the qualification of voters; if such person shall state himself duly qualified, and if the challenge shall not be withdrawn, one of the judges shall tender to him the following oath:

"You do solemnly swear [or affirm] that you are twenty-one years of age; that you are a citizen of the United States, or that you have declared your intention to become a citizen conformably to the laws of the United States on the subject of naturalization; that you have resided in this territory six months, and within the limits of the City of Rawlins ninety days next preceding this election; that you have paid a poll tax for the year———; that you have not voted at this election." [S. L. 1886, ch. 116. § 32.]

Oath of officers.

SEC. 443. Every officer of said city elected or appointed under the provisions or by virtue of this chapter or any ordinance of said city, shall take and subscribe to an oath or affirmation before some officer of Carbon County authorized to administer oaths, that he will support the constitution of the United States, the organic act of this territory, the laws of this territory, the provisions of this chapter, and the ordinances of the said City of Rawlins, and that he will well and faithfully discharge and perform all the duties of his office according to law. [S. L. 1886, ch. 116, § 33.]

Transfer of property to city from Carbon County.

SEC. 444. The board of county commissioners of the County of Carbon are hereby authorized and empowered to turn over to the said board of trustees of said City of Rawlins the wind mill and pumping appliances, tanks, pipes and water mains situated in the City of Rawlins, and now owned or controlled by said Carbon County in fee simple. Said board of trustees of said City of Rawlins are hereby authorized and empowered to make such regulations concerning the management and collection of water rents of and from said property as they shall deem expedient to the welfare of said City of Rawlins; *Provided*, This chapter shall not take effect or be in force until an election in said town shall first be held therein, at which election all the qualified voters residing in said town shall be entitled to vote; and the question then submitted to said voters shall be whether said town shall be incorporated or not; and if a majority thereof shall be in favor of such incorporation, then this chapter shall at once take effect and be in force, but not until then. Such election shall be held at any time indicated in the call therefor, but such call shall give at least fifteen days previous notice thereof, by advertisement in all newspapers published in said town at the time. It is hereby made the duty of the county clerk of Carbon County to make said call, on the request in writing of not less than fifty of the electors and tax payers of said town; and said election shall be held, conducted and the returns thereof made by the same persons and in the same manner as was the last county election held in and for said precinct. [S. L. 1886, ch. 116, § 34.]

CHAPTER 12.

GENERAL INCORPORATION OF TOWNS.

SECTION.
445. Authority to incorporate.
446. Survey and map, and their requisites.
447. Census—Time for taking- Verification.
448. Inspection of survey, etc.—Notice of application to incorporate.
449. Application to be by petition.
450. Commissioners to hear and determine application—Judicial notice taken of incorporation.
451. First election.
452. Notice and conduct of first election.
453. Qualifications of voters.
454. Canvass of votes.
455. Determination of whom elected.
456. Certificates of election.
457. Record of certified statement of election.
458. Municipal officers.
459. Term of office.
460. Elections, when held.
461. Oath of officers.
462. Vacancies in offices—Removal of officers.
463. Notice of elections.
464. Duties of mayor and clerk.
465. Town council to be body corporate.
466. Regular meetings of council.
467. Special meetings of council.
468. Enumeration of specific corporate powers.
469. Inspectors of election.
470. Fiscal year—Limitation on appropriation of money.
471. Limitation on expenditures.

SECTION.
472. Expenditure in absence of appropriation prohibited.
473. First year excepted.
474. Presentation and payment of claims.
475. Passage of by-laws and ordinances.
476. Style of ordinances—Publication.
477. Proof of ordinances.
478. Determination of amount of annual tax.
479. Duties of assessor.
480. Board of equalization.
481. Annual tax levy.
482. Tax warrant—Lien of taxes.
483. Collection of taxes—Penalty for delinquency—Tax deed.
484. Accounts of treasurer—Settlements.
485. Publication of treasurer's report.
486. Duties of clerk.
487. Powers of marshal.
488. Powers of policemen.
489. Duties of street commissioners.
490. Duties of fire wardens.
491. Jurisdiction of council—Extending town limits.
492. Police justice—Jurisdiction—Fees.
493. Punishment of persons convicted before justice.
494. Appeals from justices' courts.
495. Disposition of fines.
496. Compensation of officers.
497. Duties, powers and privileges of officers.

Authority to incorporate.

SEC. 445. Any territory not included in any incorporated city or town, which shall contain a resident population of not less than three hundred persons, and which shall contain within its boundaries an area of not exceeding two square miles, may be incorporated as a town in the manner hereinafter provided. [S. L. 1886, ch. 106, § 1.]

Survey and map, and their requisites.

SEC. 446. Any person intending to make application for the incorporation of a town, under the provisions of this chapter, shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town, which survey and map shall be made by a practical surveyor, and shall show the courses and distances of the boundaries of such territory, and the quantity of land embraced therein, the accuracy of which shall be shown by the affidavit of such surveyor, written thereon or annexed thereto. [S. L. 1886, ch. 106, § 2.]

Census—Time for taking--Verification.

SEC. 447. Such person shall cause an accurate census to be taken of the resident population of such territory, as it may be, on some day not more than forty days prior to the time of presenting such application to the board of the county commissioners as hereinafter provided, which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same. [S. L. 1886, ch. 106, § 3.]

Inspection of survey, etc.—Notice of application to incorporate.

SEC. 448. Such survey, map and census, when completed and verified as aforesaid, shall be left at some convenient place within such territory for examination by those having an interest in such application, for a period of not less than twenty days; and twenty days notice of the intended application for such incorporation shall be given by posting notices thereof in three public places in such territory, which notices shall set forth the boundaries of such territory, the time of making such application and the place where such survey, map and census may be examined. [S. L. 1886, ch. 106, § 4.]

Application to be by petition.

SEC. 449. Such application shall be by petition, subscribed by the applicant, and also by not less than thirty electors residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced therein according to the said survey, and the resident population therein contained according to the said census; and the said petition shall have attached thereto the affidavits of not less than three of the said electors, verifying the facts therein alleged, and it shall be presented to the board of the county commissioners of the county in which such territory is located, at the time stated in the notice of such application, or as soon thereafter as the board can receive and consider the same. Such petition shall be accompanied by a copy of the notice given as required by the last preceding section, and by an affidavit showing that the provisions of said section have been fully complied with. [S. L. 1886, ch. 106, § 5.]

Commissioners to hear and determine application—Judicial notice taken of incorporation.

SEC. 450. The board of the county commissioners shall hear all the parties interested in such application, who shall appear and ask to be heard, and it may adjourn such hearing from time to time. If such board, after hearing the parties, shall be satisfied that all the requirements of this chapter in respect to such application have been fully complied with, and that such territory contains the population required by section four hundred and forty-five, it shall make an order declaring that such territory shall be an incorporated town, by the name specified in such petition, or by such other name as to such board shall seem proper; which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence thereof by the name and style aforesaid, shall thereafter be taken notice of judicially in all courts and places in this territory without specially pleading or alleging the same. [S. L. 1886, ch. 106, § 6.]

First election.

SEC. 451. At the time of making such order the said board shall appoint three electors residing in such town as inspectors of election, to hold the first election therein, as provided in this chapter, and said board shall also appoint the time of holding such election; but a failure to hold such first election on the day so appointed shall not be deemed to work a dissolution of such corporation; and in such case the inspectors of election so appointed may fix any other time for holding such first election, public notice thereof, pursuant to the next succeeding section, being first given; *Provided*, That the time so fixed by such inspectors of election shall be within three months after the time first appointed. [S. L. 1886, ch. 106, § 7.]

Notice and conduct of first election.

SEC. 452. The inspectors of election shall immediately select some convenient place within such town as a voting place, and shall forthwith give notice of such election, and of the officers to be elected thereat, by posting up notices thereof in three public places in such town, at least fifteen days previous to the day appointed for holding the same. At such election the said inspectors shall select one of their number to act as clerk and the other two shall preside as judges of said election; and in the receiving and canvassing of votes, they shall be governed by the laws then existing, so far as the same are applicable, for the election of county officers. [S. L. 1886, ch. 106, § 8.]

Qualifications of voters.

SEC. 453. Every elector of the county residing in such town shall be entitled to vote at such first election; and, at all subsequent elections, every elector of the county, who has been a *bona fide* resident of such town for a period of not less than ninety days, and who has paid a poll tax for the preceding year, where such election is to be held, shall be a qualified voter; *Provided*, That at such subsequent elections no one shall be entitled to vote against whom there are any delinquent municipal taxes remaining unpaid. [S. L. 1886, ch. 106, § 9.]

Canvass of votes.

SEC. 454. Immediately upon the closing of the poll, the inspectors of such first election shall canvass the votes given thereat, shall openly declare the result, and shall make and subscribe a certificate of such canvass, which shall show the whole number of votes given, the number given for each person voted for, and the office for which he shall have been voted for; which certificate shall be filed with the clerk of such town as soon as he shall have qualified. [S. L. 1886, ch. 106, § 10.]

Determination of who elected.

SEC. 455. The persons who are eligible and who shall have received the highest number of votes at such election shall be deemed elected, and each person so elected shall be at once notified in writing of his election by such inspectors. [S. L. 1886, ch. 106, § 11.]

Certificates of election.

SEC. 456. Such inspectors shall also make a certified statement over their own signatures of the persons elected to fill the several offices in said town at such first election, and shall file the same in the office of the register of deeds of the proper county, within fifteen days after the date of such election, and no act or ordinance of any town council chosen at such first election shall be valid until the provisions of this section are substantially complied with. [S. L. 1886, ch. 106, § 12.]

Record of certified statement of election.

SEC. 457. It shall be the duty of the register of deeds of such county to make a record of such certified statement, for which services there shall be paid the same fee as is allowed for similar services in other cases. [S. L. 1886, ch. 106, § 13.]

Municipal officers.

SEC. 458. The municipal officers of such town shall be a mayor and four councilmen, who shall together form a town council, one marshal, who shall also be street commissioner, one clerk, one treasurer and one assessor, all of whom shall be elected; and also such appointive officers as shall be provided for by ordinance under the provisions of this chapter; *Provided*, That nothing in this chapter shall be construed to prevent the offices of the clerk and assessor being held by one and the same person. [S. L. 1886, ch. 106, § 14.]

Term of office.

SEC. 459. The officers first elected shall hold their offices until the second Tuesday in May following their election, and those subsequently elected shall hold their respective offices until the second Tuesday in May following their election, and until their successors are elected and qualified; *Provided*, That of the four councilmen first elected two shall hold their offices until the second Tuesday in May following their election, and two until one year from the second Tuesday in May following their election. At the first meeting of the town council it shall be decided by lot which of the four councilmen shall hold office for the long term; and thereafter at each annual election two councilmen shall be elected whose term of office shall be for a period of two years, and until their successors are elected and qualified. [S L. 1886, ch. 106, § 15.]

Elections, when held.

SEC. 460. All elections for officers, after the first election, shall be held on the second Tuesday in May of each year, at such place as may be designated by the town council; and at the first and all subsequent elections the polls shall be opened at ten o'clock in the forenoon and closed at four o'clock in the afternoon. [S. L. 1886, ch. 106, § 16.]

Oath of officers.

SEC. 461. Each officer elected or appointed under the provisions of this chapter shall, within five days after such election or appointment, take and subscribe, before some person authorized to administer the same, the oath required of county officers, with such additions as may be prescribed by ordinance, for the faithful performance of the duties of his office, and shall file the same with the clerk of such town. [S. L. 1886, ch. 106, § 17.]

Vacancies in offices—Removal of officers.

SEC. 462. Any vacancy occurring in any of the offices of such town, whether by death, removal from office, resignation or otherwise, shall be filled for the unexpired term thereof by appointment, to be made by the town council; and when such vacancies shall be so filled, the person so appointed shall continue in office until their successors shall be elected and qualified, and the several officers in such town, other than the mayor and councilmen, shall at all times be subject to the supervision and control of the town council in the discharge of their official duties, and may be removed from office by a vote of three-fourths of the councilmen for any refusal or neglect to comply with their orders or directions, or any gross neglect in the discharge of their official duties; but such officers shall be entitled to have a specification of the charges against them which are made the ground of removal, and an opportunity to be heard in their defense; and the cause of any such removal, in all cases, shall be made a matter of record by the town council. [S. L. 1886, ch. 106, § 18.]

Notice of elections.

SEC. 463. It shall be the duty of the clerk of such town to give at least ten days notice in writing, by posting the same in at least three public places in such town, of the time and place of holding all elections. [S. L. 1886, ch. 106, § 19.]

Duties of mayor and clerk.

SEC. 464. It shall be the duty of the mayor to preside at all meetings of the town council, but in case of his absence one of the councilmen shall be chosen to act as president *pro tem.;* such mayor shall have one vote and no more, upon all questions coming before the council, and he shall commission all officers appointed or elected after the first election. The clerk shall keep a fair and accurate record of the proceedings of the town council, and in the absence of the clerk some suitable person may be appointed to act as clerk *pro tem.* under the supervision and control of the council. [S. L. 1886, ch. 106, § 20.]

Town council to be body corporate.

SEC. 465. The town council of such town, when organized as hereinbefore provided, shall be a body corporate and politic, with perpetual succession, to be known by the name designated under the provisions of section four hundred and fifty, and by that name shall be known in law, and shall be capable of suing and being sued, of pleading and being impleaded in all courts and places. [S. L. 1886, ch. 106, § 21.]

Regular meetings of council.

SEC. 466. Regular meetings of the town council shall be held once each month, on the first Monday thereof, or at such other time in the month as may be provided by ordinance; and such meetings may be held from time to time as by adjournment or resolution the council may direct; and all meetings of the town council shall be open and public. A majority of such town council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. [S. L. 1886, ch. 106, § 22.]

Special meeting of council.

SEC. 467. The mayor and any two councilmen, or a majority of the councilmen, shall have power to call special meetings of the town council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be made a matter of record upon the journal. [S. L. 1886, ch. 106, § 23.]

Enumeration of specific corporate powers.

SEC. 468. The town council of any such town, in its corporate capacity, shall have the following powers:

Common seal.

First—To have a common seal, and to alter the same at pleasure;

Town property.

Second—To purchase, receive by donation or otherwise, and to hold real and personal property for the use of the town, and to sell and convey any real or personal property, and to make such orders respecting the same, as may be conducive to the best interests of the town;

Fire Regulations.

Third—To procure fire engines, hooks, ladders and other apparatus, and to organize fire engine and hook and ladder companies, and prescribe rules for the government thereof; and generally to make such provisions and regulations for prevention and extinguishment of fires as they may deem proper, and to provide for, appoint and regulate fire wardens when necessary;

Opening, widening, etc., of streets.

Fourth— To lay out, open, widen, extend, grade or otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair, and to vacate the same. For making and repairing sidewalks the assessment shall be made on all lots and pieces of ground abutting on the improvements, according to the front foot thereof. For the purpose of laying out, opening, widening, extending, grading and otherwise improving the streets, alleys, sewers and crossings, and keeping them in repair, the town council shall have power to require every able-bodied male citizen within the corporation, over the age of twenty-one years, and less than fifty years of age, to work, or furnish two days work upon said streets, alleys, sewers or crossings, or pay into the city treasury of said town, in lieu thereof, a sum not exceeding four dollars;

General Taxes.

Fifth—To levy and collect taxes for general revenue purposes, not exceeding one per centum on the dollar of valuation, in any one year, on all property within the limits of such town, taxable under the laws of the territory, and the assessment, levy and collection of taxes shall be made as provided in this chapter, and as may be further provided by ordinance:

Nuisances—Public health—Water supply.

Sixth—To declare what shall constitute a nuisance, and to prevent, abate and remove the same, and to take such measures for the preservation of the public health as they deem necessary, and to provide the town with water;

Control of animals running at large—Dog tax.

Seventh—To regulate, restrain and prohibit the running at large of cattle, horses, hogs, mules, sheep, goats, dogs and other animals within said town, and to cause such as may be running at large contrary to ordinance to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition or regulation, and the expense of impounding and keeping the same, and of such sale; to regulate and provide for the taxing of owners of dogs running at large contrary to any ordinance regulating the same, and to provide for the extermination of all such dogs for which the tax shall not have been paid;

Pounds.

Eighth—To provide for the erection of all needful pens and pounds for the use of the town, within or without the town limits; to appoint and compensate keepers thereof, and to establish and enforce rules governing the same;

Licenses.

Ninth—To license, tax, regulate, suppress and prohibit hucksters, peddlers, pawnbrokers, keepers of theatrical exhibitions, shows and amusements, and to revoke such license at pleasure; also to license and regulate or forbid the sale of spirituous and intoxicating liquors within such town, or within one mile of the outer boundaries thereof;

Licenses.

Tenth—To license and regulate billiard tables, bowling alleys, and other games and gaming tables, drays, hacks, carriages, omnibusses, carts, wagons and other vehicles used within said town for pay;

Control of gambling and immorality.

Eleventh—To restrain, prohibit and suppress tippling shops, houses of prostitution and other disorderly houses and practices, games and gambling houses, desecrations of the Sabbath day, commonly called Sunday, and all kinds of public indecency, within the limits of the town or within one mile thereof;

Public peace and safety.

Twelfth—To prevent and restrain riots, routs, noises, disturbances, or disorderly assemblies in any street, house or place in the town; to regulate, punish and prevent a discharge of firearms, rockets, powder, fireworks or any other dangerously combustible material, in the streets, lots, grounds, alleys, or about or in the vicinity of any building; to regulate and punish the carrying of concealed weapons; to arrest, regulate, punish, fine or set to work all vagrants and persons found in said town without visible means of support or some legitimate business; to close all places of business on the Sabbath day, commonly called Sunday; and to prohibit and suppress the sale of spirituous and intoxicating liquors on any day of municipal, county or territorial election;

Street obstructions.

Thirteenth—To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys and other town property, and to prevent and punish horse racing, fast riding or driving in the streets, highways, alleys, bridges or other places in the town, and all games, practices or amusements therein likely to result in damage to any person or property; to prevent and punish the riding, driving or passing of horses, mules, cattle of other teams, or any vehicle drawn thereby, over, upon or across sidewalks along any streets of the town;

Quarantine regulations.

Fourteenth—To make regulations to prevent the introduction and spreading of contagious diseases within the town; and to make quarantine laws for that purpose, and enforce the same within two miles of such town;

Hospitals, poorhouses, etc.

Fifteenth—To erect, establish and regulate hospitals, workhouses and poorhouses, and to provide for the government and support thereof;

Police force.

Sixteenth—To establish, provide for the appointment of, regulate and support a police force, and to define the powers and duties of the same;

Public wells, etc.

Seventeenth—To establish, construct and regulate public wells, cisterns, reservoirs, aqueducts and irrigating ditches, and to provide for the filling of the same;

Public buildings.

Eighteenth—To provide for the erection and government of all necessary buildings for the use of the town;

Bonds of officers.

Nineteenth—To require from all officers and servants elected or appointed, bonds and security for the faithful performance of their duties;

Fire limits and building regulations.

Twentieth- To prescribe the limits within which no building shall be constructed, except of stone or brick, or other incombustible material, and to impose a penalty for the violation thereof;

Railway regulations.

Twenty-first—To regulate depots, depot grounds and places for storing freight and goods, and to provide for and regulate the passage of railways through the streets and public grounds of the town; to regulate the crossings of railway tracks, and to provide precautions and to prescribe rules regulating the same; and to regulate the running of railway engines, cars and trucks within the limits of the town; and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines;

Eminent domain.

Twenty-second—To take private property for public use, in such manner as may be provided by law;

Lands outside town limits.

Twenty-third—To purchase and hold in the manner herein provided, lands outside of the limits of such town, for the purpose of the burial of the dead, and all necessary grounds for hospitals and water works;

Cemeteries.

Twenty-fourth— To survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds owned by such town, and to provide for paying the expenses thereof;

Conveyance of cemetery lots.

Twenty-fifth—To convey cemetery lots owned by such town, by certificates signed by the mayor and countersigned by the clerk, under the seal of the town, specifying that the person to whom the same is issued is the owner of the lot or lots described therein, by number, as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his heirs and assigns, a right in fee simple to such lot, for the sole purpose of interment, under the regulations of the town council, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of the lots shall be deemed and recognized as a sufficient description thereof;

Cemetery regulations.

Twenty-sixth—To limit the number of lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves, or of such lots;

Employment of attorney.

Twenty-seventh—To employ an attorney to draft ordinances and other documents relating to the affairs of the town, and employ counsel in all cases by them deemed necessary, and pay for the same such reasonable amounts as may be agreed upon, and whenever, by them deemed necessary, appoint and employ a town attorney, whose duties and compensation shall be as may be provided by ordinance;

Appropriation of money.

Twenty-eighth—To appropriate money and provide for the payment of the debts and expenses of the town;

By-laws and ordinances—Fines and penalties.

Twenty-ninth—To make and establish such by-laws, ordinances, rules and regulations, not repugnant to the laws of this territory, as may be necessary to carry into effect the provisions of this chapter, and to repeal, alter and amend the same as they shall seem to require; and to enforce all such by-laws, ordinances, rules and regulations, by inflicting penalties for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment, until the amount of said judgment and costs shall be paid. [S. L. 1886, ch. 106, § 24.]

Inspectors of election.

SEC. 469. At all elections held under the provisions of this chapter, after the first election, a board of three persons, appointed by the town council out of their own number, or from among the qualified electors of such town, as they may deem advisable, shall be inspectors of such elections, and in the receiving and canvassing of votes they shall be governed by the laws then existing, so far as the same are applicable, for the election of county officers. [S. L. 1886, ch. 106, § 25.]

Fiscal year—Limitation on appropriation of money.

SEC. 470. The fiscal year of each town organized under the provisions of this chapter shall commence on the first day of May in each year or at such other time as may be fixed by ordinance. The town council shall, within the last quarter of each fiscal year, pass an ordinance to be termed the annual appropriation bill for the next fiscal year, in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation; and such ordinance shall specify the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. No further appropriation shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the qualified electors of such town, either by a petition signed by them, or at a general or special election duly called therefor. Nor shall the total amount appropriated exceed the probable amount of revenue that will be collected during the fiscal year. [S. L. 1886, ch. 106, § 26.]

Limitation on expenditures.

SEC. 471. Neither the town council or any officer of the corporation shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill of that year, except as is herein otherwise specially provided. And no expenditure for an improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such improvement in the annual appropriation bill; *Provided*, That nothing herein contained shall prevent the town council from ordering by a four-fifths vote any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. [S. L. 1886, ch. 106, § 27.]

Expenditure in absence of appropriation prohibited.

SEC. 472. No contract shall be made by the town council or any committee or member thereof, and no expense shall be incurred by any of the officers of the corporation, whether the object of the expenditure shall have been ordered by the town council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided. [S. L. 1886, ch. 106, § 28.]

First year excepted.

SEC. 473. The provisions of the last three preceding sections shall not apply to towns during the first year of their corporate existence. [S. L. 1886, ch. 106, § 29.]

Presentation and payment of claims.

SEC. 474. All claims and demands against any town organized under the provisions of this chapter shall be presented to the town council in writing with a full account of the items, and verified by the oath of the claimant or his agent, showing that the same is correct, reasonable and just, and no claim or demand shall be audited or allowed unless presented and verified as provided in this section. Upon the allowance of any such claim or demand the clerk shall draw a warrant upon the treasurer for the amount thereof, which warrant shall be signed by the mayor and attested by the clerk with the corporate seal; and upon presentation of any such warrant to the town treasurer he shall pay the same; *Provided*, That if there is not sufficient money in the treasury to pay the same, he shall endorse thereon that the same has been presented for payment, stating the date thereof, and has not been paid for want of funds, and thereafter such warrant shall draw interest at the rate of eight per centum per annum. [S. L. 1886, ch. 106, § 30.]

Passage of by-laws and ordinances.

SEC. 475. All by-laws and ordinances shall be passed pursuant to such rules and regulations as the town council may provide, and shall within a reasonable time after passage be signed by the mayor and attested by the clerk, and recorded in a book kept for that purpose. On the passage of any by-law, ordinance or resolution, the ayes and nays shall be taken and entered on the journal. [S. L. 1886, ch. 106, § 31.]

Style of ordinances—Publication.

SEC. 476. The style of all ordinances shall be: "Be it ordained by the town council of the Town of ———." Every by-law, ordinance or resolution, unless in case of emergency, shall be published by posting certified copies thereof in three public places in such town for at least ten days before the same shall take effect. [S. L. 1886, ch. 106, § 32.]

Proof of ordinances.

SEC. 477. All ordinances, by-laws and resolutions of any town may be proved by the certificate of the clerk, under the seal of the town, and when printed or published in book or pamphlet form, and purporting to be published by authority of the town, shall be read and received in all courts and places without further proof. [S. L. 1886, ch. 106, § 33.]

Determination of amount of annual tax.

SEC. 478. The town council shall, on or before the first Monday of April of each year, after the town shall have been incorporated, determine the amount of general tax for the current year. [S. L. 1886, ch. 106, § 34.]

Duties of assessor.

SEC. 479. The assessor shall assess all property subject to taxation within the corporate limits of such town, at its true cash value, and shall make returns of his assessment roll to the town council on or before the fifteenth day of April of each year, and shall receive for his services, as such assessor, such compensation as shall be allowed by the town council for the time actually employed in making said assessment. [S. L. 1886, ch. 106, § 35.]

Board of equalization.

SEC. 480. The town council and assessor of the town shall constitute a board for the equalization of the assessment of the several persons in the town, substantially in the same manner as is required of the county boards of equalization, and they shall hold a special meeting at the office of the town clerk, within five days after the return of the assessment roll in each year, and shall be authorized to adjourn such meeting from day to day, for not more than three days; and at such meeting they shall add to said assessment roll any taxable property in the town, not included in the assessment as returned by the assessor, and shall assess the value thereof, and shall hear and determine the complaints of all persons feeling aggrieved by the assessment of their property as returned by the assessor, and for the purpose of equalizing the assessment roll, they may increase, diminish, or otherwise alter and correct any assessment; *Provided*, That it shall be the duty of the town clerk to give notice to each person, company or corporation whose assessment has been raised by the board of equalization, stating the amount of such increase of assessment as aforesaid. Such notice may be given by personal service or by statement either written or printed, and sent postage prepaid by mail, properly addressed to such person, company or corporation, or to the agent or attorney of such person, company or corporation, either of whom may appear before the board of equalization at their next regular meeting, to be held within ten days after the adjournment of the first meeting, and upon evidence satisfactory to the board, showing that the assessment, or any part thereof, is unjust or more than the actual cash value of such property so assessed, the said board shall reduce such assessment in accordance with the facts established by the evidence introduced, or such claims may be presented at the next annual meeting of the board of equalization, when such board may abate such tax in proportion to such unjust or erroneous assessment; *Provided*, That it be evident to such board that no part of such claimant's taxable property has been omitted or undervalued in the original assessment, or by the board of equalization for the year or years for which such claim is made; said officers while sitting as such board of equalization, shall receive three dollars per day. [S. L. 1886, ch. 106, § 36.]

Annual tax levy.

SEC. 481. When the assessment roll shall have been corrected and completed the trustees shall levy a tax upon the taxable property situate within the corporate limits of said town, not exceeding one per cent. on the dollar of valuation in any one year, and shall set opposite the name of each person taxed the description and valuation of the property charged therewith, and the amount of the tax assessed against such person, and when such tax list shall have been made, they shall cause a copy thereof, with a warrant annexed, to be delivered to the treasurer of said town. [S. L. 1886, ch. 106, § 37.]

Tax warrant—Lien of taxes.

SEC. 482. Such warrant shall be under the seal of the corporation, and be signed by the mayor, and attested by the clerk, and shall command the treasurer to collect the taxes specified in his duplicate within sixty days, and make return of such warrant. The lien for taxes for corporation purposes shall attach to all property owned by each person, company or corporation, subject to taxation under this chapter, from the day the tax list or duplicate and warrant came into the hands of the treasurer. [S. L. 1886, ch. 106, § 38.]

Collection of taxes—Penalty for delinquency—Tax deed.

SEC. 483. It shall be the duty of the treasurer to immediately proceed and collect the taxes on said duplicate by advertising for three successive weeks in a newspaper, if any be printed in such town, otherwise by posting up notices in three public places therein, the fact that said taxes are due, and by personally calling on each and every person, company or corporation, so taxed, and demanding payment of the same, except as to non-residents, to whom he shall mail a notice as aforesaid, postage prepaid, addressed to the last known residence of such person or corporation; and in the event that any portion of said tax so assessed and levied shall remain unpaid at the expiration of thirty days from the date of the first advertisement, or posting of notices as above provided, it shall be the duty of said treasurer, and he shall have power, to collect the same, with ten per centum addition upon said amount, as a penalty for so failing to pay said tax, and also all legal costs incurred in making said collection, in the manner and in accordance with the provisions of the laws of the territory for the collection of territorial and county revenue, except in regard to the time of making the distraint of property necessary to enforce the collection of said tax, which time shall, for the purpose of collecting this tax, be deemed to commence with the expiration of the thirty days hereinbefore referred to. All deeds or conveyances for lands so sold for taxes, shall be prima facie evidence of the validity and regularity of all the proceedings anterior to the giving of such deed or conveyance, and upon which it is based. [S. L. 1886, ch. 106, § 39.]

Accounts of treasurer—Settlements.

SEC. 484. The treasurer of said town shall so keep his accounts as to show when and from what sources all moneys paid to him have been derived, and to whom and when such moneys or any part thereof have been paid out; his books, accounts and vouchers shall at all times be subject to examination by the town council, or any elector of said town, and it is hereby made the duty of the town council to examine the same at regular meetings of such council, on some day between the first and last Mondays of March of each year, and have settlements with such treasurer. [S. L. 1886, ch. 106, § 40.]

Publication of treasurer's report.

SEC. 485. It shall be the duty of the town council immediately after the annual settlement with the treasurer, to publish in a newspaper, if one be published in said town, or if there be none, then by posting in three or more public places an exhibit of the receipts and expenditures, specifying the source of such receipts, and what appropriations were made, for what objects, and the specific amount of each. [S. L. 1886, ch. 106, § 41.]

Duties of clerk.

SEC. 486. It shall be the duty of the clerk to keep the corporate seal, papers and books belonging to such town, to attend the meetings of the town council, and to keep a journal of all their proceedings; also to keep a record of all ordinances passed by the town council, which journal and record, after the approval of the same, shall be signed by the mayor and attested by the clerk; to issue all licenses authorized by this chapter, upon the presentation of the receipt of the treasurer, showing that the money therefor has been paid to said treasurer; to attest all warrants, bonds and licenses issued in pursuance to the orders and ordinances of the town council; to affix the corporate seal thereto; to keep an account in a suitable book, under appropriate heads, of all warrants drawn on the treasury, and an account of all licenses issued, showing the date and amount thereof. [S. L. 1886, ch. 106, § 42.]

Powers of marshal.

SEC. 487. The marshal of said town shall possess the same powers and be subject to the same liabilities possessed and conferred by statute upon constables, in executing the orders of the town council, and in enforcing the by-laws and ordinances of said town; he shall be chief of police, and shall at all times have power to make and order arrests with proper process, for any offense against the ordinances of the town or laws of the territory, and bring the offender to trial before the proper officer, and to arrest without process in all cases where such offense shall be committed or attempted on view. [S. L. 1886, ch. 106, § 43.]

Powers of policemen.

SEC. 488. The policemen of such town shall have power to arrest all offenders against the laws of the territory or town, by day or by night, in the same manner as the marshal, and keep them in the town prison or other place, to prevent their escape until trial can be had before the proper officer. Such policemen in the discharge of their duty, shall be subject to the orders of the mayor and marshal only. [S. L. 1886, ch. 106, § 44.]

Duties of street commissioner.

SEC. 489. It shall be the duty of the street commissioner to superintend the opening, widening, grading and improving of streets, avenues, alleys or lanes within the limits of the town, and the building and repairing of sidewalks, therein, the paving, curbing and guttering of all streets and avenues, and the filling of the same; the building of bridges, culverts and foot walks across the streets; all improvements of the squares or areas formed by the crossing of streets within the corporation, the grading, fencing, ornamenting and other improvements of all burial and cemetery grounds, and the avenues leading thereto, owned by such town; the construction of walks therein, and the rearing and protecting of ornamental shade trees therein, and to see that none of the provisions of ordinances relating to burial and cemetery grounds are violated and to report all such violations to the town council; to see that the provisions of this chapter concerning the working upon the streets by male citizens of such town are complied with, and collect and receipt for all moneys paid in lieu thereof, and pay over the same into the treasury of said town. [S. L. 1886, ch. 106, § 45.]

Duties of fire wardens.

SEC. 490. The fire wardens shall attend all fires and give their personal superintendance to extinguishing the same. [S. L. 1886, ch. 106, § 46.]

Jurisdiction of council—Extending town limits.

SEC. 491. The town council shall have jurisdiction over any commons, public grounds or other property belonging to the said town, and shall have power to annex to the said town any contiguous territory thereto, upon the written application of the owner or owners of such contiguous territory, and when said territory is so annexed it shall be a part of said town, subject to all the provisions of this chapter. [S. L. 1886, ch. 106, § 47.]

Police justice—Jurisdiction—Fees.

SEC. 492. It shall be the duty of such town council to designate a justice of the peace, residing in said town, who shall be styled "police justice," and he shall have jurisdiction to hear and determine all cases arising under the ordinances of such town, and the practice before such justice in such cases shall conform as near as may be to the provisions of the justice's code concerning complaints, continuances and appeals. Such police justice shall be entitled to such fees as are allowed to justices of the peace by the laws of the territory, unless otherwise provided by ordinance. [S. L. 1886, ch. 106, § 48.]

Punishment of persons convicted before justice.

SEC. 493. Any person convicted before a police justice shall be punished by such fine and imprisonment as may be provided by ordinance; *Provided*, That no fine shall be greater than one hundred dollars, and no imprisonment for a longer time than three months. The police justice shall have the same power to punish for contempt as justices of the peace have in like cases. [S. L. 1886, ch. 106, § 49.]

Appeals from justice's court.

SEC. 494. Appeals from the judgment or sentence of such police justice may be taken to the district court in the same manner as is now provided by law for appeals from justices' courts in criminal cases, and shall be dealt with by the courts as criminal cases. [S. L. 1886, ch. 106, § 50.]

Disposition of fines.

SEC. 495. All fines and penalties collected, arising from a breach of the ordinances of such town, shall be paid into the town treasury. [S. L. 1886, ch. 106, § 51.]

Compensation of officers.

SEC. 496. The compensation of the several officers of the town shall be such as may be provided by ordinance; *Provided*, That the compensation of the councilmen shall not exceed fifty dollars each per annum. [S. L. 1886, ch. 106, § 52.]

Duties, powers and privileges of officers.

SEC. 497. The duties, powers and privileges of all the officers connected with any town government shall be as defined in this chapter, and as further provided by ordinance. [S. L. 1886, ch. 106, § 53.]

TITLE 5. COMMON LAW OF ENGLAND.

CHAPTER 1.

ADOPTION OF.

SECTION.
498. Terms of adoption.

Terms of Adoption.

SEC. 498. The common law of England as modified by judicial decisions, so far as the same is of a general nature and not inapplicable, and all declaratory or remedial acts or statutes made in aid of, or to supply the defects of the common law prior to the fourth year of James the First, (excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and ninth chapter of thirty-seventh Henry Eighth) and which are of a general nature, and not local to England, shall be the rule of decision in this territory when not inconsistent with the laws thereof, and shall be considered as of full force, until repealed by legislative authority. [C. L. 1876, ch. 26, § 1.]

TITLE 6. CONDEMNATION.

CHAPTER 1.

THE TAKING OF PRIVATE PROPERTY FOR CERTAIN PUBLIC USES.

SECTION.
499. Condemnation proceedings by territory.
SECTION.
500. Proceedings by water company, city or town.

Condemnation proceedings by territory.

SEC. 499. The territory shall have the power to purchase, or acquire by condemnation, any real estate within the territory, as a site for any public building or buildings, or for any other necessary public purpose, and shall have the power, when the interests of the public so demand, to condemn highways, alleys and other public ways, which power of condemnation shall be exercised in the manner prescribed for the condemnation of real estate by certain corporations, under the provisions of section five hundred and forty-eight, so far as the same are applicable. The petition for the appointment of appraisers, provided in section five hundred and forty-eight, shall be presented by the attorney general in the name of the territory. [S. L. 1886, ch. 102, § 1.]

Proceedings by water company, city or town.

SEC. 500. Whenever any water company or incorporated city or town of this territory shall require any land, real estate, or claim, or right of way, for construction and maintenance of water works; or any land which may be affected by any operation connected with the construction or maintenance of the same, such water company or incorporated city or town may acquire such land, real estate, claim or right of way, in the same manner as is provided by section five hundred and forty-eight, and said section shall be construed to be as applicable to such water company, incorporated city or town as it is now applicable to road, railroad, ditch or telegraph companies specifically named therein. [S. L. 1882, ch. 13, § 10.]

TITLE 7. CORPORATIONS.

Chapter 1. Creation and regulation.
Chapter 2. Power of railroad corporations to issue bonds.
Chapter 3. Aid by counties to railroad corporations.
Chapter 4. Religious, fair, fire and other associations.
Chapter 5. Certain church and eleemosynary associations.
Chapter 6. Secret societies.
Chapter 7. Foreign corporations.
Chapter 8. Insurance corporations.
Chapter 9. Confirmation of certain corporate acts.
Chapter 10. Agricultural and stock associations.
Chapter 11. Dissolution.

CHAPTER 1.

CREATION AND REGULATION.

SECTION.
501. Certificates of incorporation—Filing and record thereof—Powers of certain corporations.
502. Certificates as evidence—General corporate powers.
503 Places of carrying on business.
504. Principal place of business.
505. Trustees—Annual election—Notice of election—Filling vacancies.
506. Failure to elect trustees at time designated.
507. Corporate officers.
508. Assessments on capital stock.
509. By-laws.
510. Transfer of stock—Purchase by corporation.
511. Certified copy of certificate as evidence.
512. Liability of stockholders—Assessments to be paid in installments.
513. Full paid stock may be issued for property.
514. Recording of certificate of final payment of capital.
515. When dividends prohibited—Liability of trustees.
516. Executors, etc., holding stock not liable.
517. Executors and guardians to vote stock.
518. Reservation of legislative authority over corporations.
519. Capital stock may be increased or diminished.
520. Procedure in changing amount of capital stock.
521. Notice to stockholders of proposed change.
522. Stockholders meeting to make change—Certificate of proceedings.
SECTION.
523. Limitation on incurring debts—Liability of trustees.
524. Statement of affairs to be made on request of stockholders.
525. Construction of roads by mining companies.
526. Certificate of wagon road companies—Rates of toll.
527. Toll rates, how prescribed.
528. Rates to remain unchanged for two years.
529. Rates when road lies in two or more counties.
530. Toll not to be collected when road out of repair.
531. Fine for refusing to pay toll.
232. Certificate of ditch company.
533. Right of way for ditch company.
534. Ditch company shall sell water.
535. Ditch to be kept in good condition.
536. Application of four preceding sections.
537. Certificate of flume company.
538. Certificate of bridge or ferry company.
539. Bridge or ferry to be kept in good order.
540. Toll rates to be posted.
541. Certificate of telegraph company.
542. Limitation of time for completion of corporate works.
543, General powers of corporation.
544. Limitation upon corporate powers.
545. Penalty for damaging corporate property.
546. Issuing notes as money forbidden.
547. Companies organized under Dakota laws may re-incorporate.
548. Condemnation proceedings by railroad and other companies.

Certificates of incorporation—Filing and record thereof—Powers of certain corporations.

Sec. 501. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, chemical, merchandizing or mechanical business, constructing wagon roads, railroads, telegraph lines, digging ditches, building flumes, running tunnels, or carrying on any branch of business designed to aid in the industrial or productive interests of the country, may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, duplicate certificates in writing, in which shall be stated the corporate name of said company, and the object for which the company shall be formed, the amount of capital stock of the said company, the term of its existence, not to exceed fifty years, the number of shares of which the said stock shall consist, the number of trustees, and their names, who shall manage the concerns of the said company for the first year, and the name of the town and county in which the operations of the said company shall be carried on, and shall file one of the said certificates in the office of the county clerk of each county wherein the business of the company is to be carried on, and one thereof in the office of the secretary of the territory. The county clerk shall record said certificate in a book kept by him in his office for that purpose; *Provided*, *nevertheless*, That any three or more persons who may desire to form a company, the object of which shall be to aid the industrial or productive interests of the country, but without any purpose of direct gain to itself, then and in such case, such company shall not have a capital stock, and the certificate of its incorporation shall not contain any of the statements appertaining to capital stock as above required, or its division into shares; but in lieu thereof, they shall state and show in such certificate that such company is not organized for direct gain, and has no capital stock; and the members and officers of such company shall be fixed and provided for by the by-laws of such company; *Provided further*, That any such corporation shall have power to raise money for the purpose of carrying on and conducting the business of the corporation, and may adopt by-laws providing for and regulating the levying of assessments against the members of the company; and such company shall have the power and authority to enforce the payment of such assessments made by the company, by a suit at law, to be brought in the name of the company against any member failing to pay his assessment at the time and in the manner provided by the by-laws of such company. [S. L. 1884, ch. 25, § 1. S. L. 1886, ch. 17, § 1.]

Certificates as evidence—General corporate powers.

SEC. 502. When the certificate shall have been filed as aforesaid, with the secretary of the territory, he shall record and carefully preserve the same in his office, and a copy thereof duly certified by the secretary of the territory, under the great seal of the Territory of Wyoming, shall be evidence of the existence of such company; and the persons who shall have signed and acknowledged the same, and their successors shall be a body politic and corporate, in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory, and they and their successors may have a common seal, and may make or alter the same at pleasure, and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation or otherwise, and holding or conveying by deed or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate. [C. L. 1876, ch. 34, p. 228, § 2.]

Places of carrying on business.

SEC. 503. Any certificate hereafter filed and recorded under the provisions of this chapter, may designate one or more places where the company may carry on its business. [C. L. 1876, ch. 34, p. 229, § 3.]

Principal place of business.

SEC. 504. If any company shall be formed under this chapter for the purpose of carrying on any part of its business in any place outside of this territory, the certificate shall so state, and shall also state the name of the town and county in which the principal part of the business of said company, within this territory, is to be transacted, and said town and county shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business, within the meaning and provisions of this chapter. [C. L. 1876, ch. 34, p. 229, § 4.]

Stockholders' meeting to be held in the territory. § 643.

Trustees—Annual election—Notice of election—Filling Vacancies.

SEC. 505. The stock, property and concerns of such company shall be managed by not less than three, nor more than nine trustees, who shall respectively be stockholders in said company, and who shall (except the first year) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one-half the stock is represented; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation or otherwise, it shall be filled for the remainder of the year, in such manner as shall be provided by the by-laws of the said company. [C. L. 1876, ch. 34, p. 229, § 5.]

Failure to elect trustees at time designated.

SEC. 506. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected. [C. L. 1876, ch. 34, p. 229, § 6.]

Corporate officers.

SEC. 507. There shall be a president of the company, who shall be designated from the number of trustees, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company, by its by-laws, may require. [C. L. 1876, ch. 34, p. 229, § 7.]

Assessments on capital stock.

SEC. 508. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such time, and in such payments or installments as the trustees shall deem proper, not to exceed ten per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand, or notice requiring such payments, shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid. [C. L. 1876, ch. 34, p. 229, § 8.]

By-laws.

SEC. 509. The stockholders of such corporation, or the trustees, if the certificate of incorporation so provide, shall have power to make by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this territory, and prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. [C. L. 1876, ch. 34, p. 230, § 9.]

Transfer of stock—Purchase by corporation.

SEC. 510. The stock of such company shall be deemed personal property, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; *Provided*, Such by-laws be just, reasonable and not in conflict with law; and it shall not be lawful for such company to use any of its funds in the purchase of any stock in any other company, nor in its own; *Provided*, *however*, Such company may in its discretion purchase, hold and own any stock, and to any amount, in any other company that is or may be subsidiary or tributary to, and that does contribute to the objects and purposes of the first company in this proviso mentioned. [S. L. 1886, ch. 49, § 1.]

Certified copy of certificate as evidence.

SEC. 511. The copy of any certificate of incorporation filed and recorded in pursuance of this chapter, certified by the secretary of the territory, under the great seal of the Territory of Wyoming, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated. [C. L. 1876, ch. 34, p. 230, § 11.]

Liability of stockholders—Assessments to be paid in installments.

SEC. 512. All the stockholders of every company incorporated under the provisions of this chapter shall be severally, individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid assessments on capital stock held by them respectively, and to no other or further amount, for all debts and contracts made by such company, until the whole amount of assessments on capital stock, fixed and limited by the trustees shall be paid in, and the assessment on capital stock as fixed and limited by the trustees shall all be paid in, ten per cent. thereof within one year, and the balance shall be payable in installments, as shall be required by the trustees, who shall give six weeks notice, by publication, of the time and place for the payment of the same. [C. L. 1876, ch. 34, p. 230, § 12.]

Full paid stock may be issued for property.

SEC. 513. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls, neither shall the holders thereof be liable to any further payments under the provisions of sections five hundred and eight and five hundred and twelve, but in all statements and reports of the company, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts. [C. L. 1876, ch. 34, p. 230, § 13.]

Recording of certificate of final payment of capital.

SEC. 514. The president and a majority of the trustees, within thirty days after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the register of deeds of the county wherein the business of the said company is carried on. [C. L. 1876. ch. 34, p. 231, § 14.]

When dividends prohibited—Liability of trustees.

SEC. 515. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office; *Provided*, That if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection, in writing, with the clerk or secretary of the company and with the register of deeds within the county, they shall be exempt from the said liability. [C. L. 1876, ch. 34, p. 231, § 15.]

Executors, etc., holding stock not liable.

SEC. 516. No person holding stock in any such company as executor, administrator, guardian or trustee, and no such person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustees, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name. [C. L. 1876, ch. 34, p. 231, § 16.]

Executors and guardians to vote stock.

SEC. 517. Every such executor, administrator, guardian or trustee, shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder. [C. L. 1876, ch. 34, p. 231, § 17.]

Reservation of legislative authority over corporations.

SEC. 518. The legislature may, at any time, alter, amend, or repeal this chapter, but such amendment or repeal shall not take away or impair any remedy given against, or in favor of, any such corporation, its stockholders or officers, for any liability which shall have been previously incurred. [C. L. 1876, ch. 34, p. 231, § 18.]

Capital stock may be increased or diminished.

SEC. 519. Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this chapter, may increase or diminish its capital stock, by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section five hundred and one, subject to the provisions and liabilities of this chapter. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under the general law, or any special act, may come under, and avail itself of, the privileges and provisions of this chapter by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties and liabilities of this chapter. [C. L. 1876, ch. 34, p. 231, § 19.]

Procedure in changing amount of capital stock.

SEC. 520. Whenever the owner or owners of a majority of the shares of the capital stock of any company shall desire to call a meeting of stockholders, for the purpose of enabling the company to avail itself of the privileges of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, such owner or owners shall make application in writing to the president, or other chief officer of the company for the time being, to call a meeting of the stockholders of the company, which application shall state the purpose or purposes for which such meeting is desired. It shall thereupon be the duty of the officer of the company to whom such application is made to publish a notice, to be signed by him, in a newspaper in the county wherein is situated the principal office of the company in this territory, if any shall be published therein, at least four successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence, at least fifteen days previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital stock, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of the stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business, as aforesaid, or to enable the company to avail itself of the provisions of this chapter. [S. L. 1884, ch. 22, § 1.]

Notice to stockholders of proposed change.

SEC. 521. Whenever the president or other chief officer of a company shall receive an application as aforesaid, he shall file the same with the secretary or other person having the custody of the stock books of such company; and it shall be the duty of the person having the custody of such stock books immediately to furnish the president or other chief officer of the company for the time being with a list of the stockholders of the company, with the usual place of residence of each stockholder at the time such application is received for filing, and the notices by mail herein provided for shall be sent to the stockholders as shown by the books of the company at the time said application is received for filing by the secretary or other person having charge of the stock books, and all subsequent holders and owners of any of the stock of such company shall be chargeable with notice of such application and the proceedings thereunder from the time the same is received by the secretary or other person, as aforesaid, for filing, without other notice than the notice by publication as aforesaid. [S. L. 1884, ch. 22, § 1.]

Stockholders' meeting to make change—Certificate of proceedings.

SEC. 522. If, at any time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of the votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by the first section of this chapter, and when so filed and recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this chapter as the case may be. [C. L. 1876, ch. 34, p. 232, § 21.]

Limitation on incurring debts—Liability of trustees.

SEC. 523. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto, shall be personally and individually liable for such excess, to the creditors of such company. [C. L. 1876, ch. 34, p. 233, § 22.]

Statement of affairs to be made on request of stockholders.

SEC. 524. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this chapter, shall present a written request to the treasurer thereof, that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer, within twenty days after such presentation, and shall, also, at the same time, place and keep on file in his office for six months thereafter, a copy of such statement, which shall, at all times, during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this chapter, he shall forfeit and pay to the person presenting said written request, the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter, until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof. [C. L. 1876, ch. 34, p. 233, § 23.]

Construction of roads by mining companies.

SEC. 525. Any corporation or association of persons organized under this chapter, now or hereafter engaged in mining gold or silver bearing quartz rock, coal, lead, iron, copper, or other minerals, may construct or operate a railroad, tramway road or wagon road from their said mine or mines, to any point or points desired by them, and shall have the exclusive right of way to the line of their road over the unoccupied public domain for the space not exceeding one hundred feet on either side thereof, and also, the exclusive possession at the termini of their said road, and at such intermediate points as may be required, for depots, buildings, turn tables, water tanks, machine shops and other necessary appurtenances of a railroad, and said corporation or association of persons may file a survey or diagram of such line of road with the land claimed by them on either side thereof, and also the land claimed at the termini aforesaid, with the secretary of the territory, and it shall not be lawful for any person or persons to construct any road or erect any buildings or otherwise interfere with the possession of the land so indicated in the survey or diagram filed as aforesaid, and a certified copy of such survey under the seal of the territory shall be received in evidence in all courts of law or equity, within this territory. [C. L. 1876, ch. 34, p. 233, § 24.]

Certificate of wagon road companies—Rates of toll.

SEC. 526. When any three or more persons shall associate to form a company for the purpose of constructing a wagon road under the provisions of this chapter, their certificate of incorporation, in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same, as near as may be; and the said company shall have the right of way over the line named in the certificate, to erect toll gates, not to exceed one to every ten miles of road, and to collect toll thereat at the rates prescribed by the county commissioners, or the tribunal transacting county business, upon the application of such corporation, either at or before the time of commencing such road, or after completion thereof; *Provided*, That such rates of toll shall remain in force and may be collected from persons traveling such road for two years after the time of completing such road; and thereafter, at the expiration of every two years, the county commissioners or tribunal transacting county business in each county, through which such road passes, shall fix and regulate such rates of toll, but not at higher rates than those originally prescribed; *And Provided further*, That nothing in this chapter shall be so construed as to authorize any corporation formed under the provisions hereof, to locate their road, railroad, ditch or flume, or any part thereof, upon any toll road previously existing, nor upon any public highway, heretofore, and at the time of the organization of such corporation, used and traveled as such, except it may be necessary to cross such toll road or public highway; all such rates of toll shall be conspicuously posted at every gate upon such road. [C. L. 1876, ch. 34, p. 233, § 25.]

Toll rates, how prescribed.

SEC. 527. Whenever any corporation constituted or formed for the purpose of constructing a wagon road, according to the provisions of this chapter, shall have constructed one mile or more of the road by such corporation to be constructed, it shall be lawful for the county commissioners, or the tribunal transacting county business of the county in which the portion of the road so constructed shall lie, to prescribe the rate of toll to be charged and collected by such corporation upon the portion of the road so constructed; and thereafter, and as other portions of the road to be constructed by such corporation shall be completed, such county commissioners or tribunal transacting county business, shall prescribe rates of toll to be charged and collected upon other portions of the road so completed as aforesaid; and such corporation shall have power to erect toll gates, not exceeding one to every ten miles, and to collect tolls thereat, at the rates prescribed, as aforesaid, until such road be completed; *Provided*, Said road shall be completed within two years after such rates shall have been prescribed. [C. L. 1876, ch. 34, p. 240, § 46.]

Rates to remain unchanged for two years.

SEC. 528. Whenever any corporate body, organized under this chapter, shall have fully completed the wagon road to be by them constructed, and the county commissioners or tribunal transacting county business of the county in which the same shall be located, shall have prescribed the rates of toll to be charged and collected upon such road, such corporation shall be entitled to charge and collect toll at the rates so prescribed, for two years thence next ensuing; and at the expiration of the term of two years after such rates shall be prescribed, and biennially thereafter, during the existence of such corporation, the county commissioners or tribunal transacting county business, shall prescribe the rates of toll to be charged and collected on such road for the two years thence next ensuing. [C. L. 1876, ch. 34, p. 240, § 47.]

Rates when road lies in two or more counties.

SEC. 529. Whenever any wagon road constructed by any corporation organized under this chapter, shall be located in two or more counties, it shall be lawful for the county commissioners or tribunal transacting county business of the several counties into or through which such road shall pass, to prescribe the rates of toll to be charged and collected by such corporation, on the portions or parts of such road lying within the limits of such counties respectively. [C. L. 1876, ch. 34, p. 240, § 48.]

Toll not to be collected when road out of repair.

SEC. 530. No company formed under this chapter shall demand and receive toll whenever said wagon road is not in reasonably good repair, and any person having paid toll on said road, who shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace to summon the said company, or any agent of the said company to appear before him to answer in said complaint, within not over five days from the date of said complaint; and if it be found that said road is in bad condition, or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty-five dollars, to be collected from said company, and said justice shall issue his order that no toll be collected upon said road or any part thereof until it is put in good repair. [C. L. 1876, ch. 34, p. 234, § 26.]

Fine for refusing to pay toll.

SEC. 531. Any person, after toll shall have been demanded by the regularly authorized toll collector, who may be found traveling upon said road and refusing to pay said toll, shall be subject to a fine of not less than five dollars nor more than ten dollars for such offense, the same to be collected before any justice of the peace in the county wherein such road is located. [C. L. 1876, ch. 34, p. 234, § 27.]

Certificate of ditch company.

SEC. 532. Whenever any three or more persons associate under the provisions of this chapter, to form a company for the purpose of constructing a ditch or ditches for the purpose of conveying water to any mines, mills, or lands to be used for mining, milling or irrigating of lands, they shall in their certificate, in addition to the matters required in five hundred and one, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch or ditches, as near as may be, and the use to which said water is intended to be applied. [S. L. 1884, ch. 24, § 1.]

Right of way for ditch company.

SEC. 533. Any ditch company formed under the provisions of this chapter shall have the right of way over the lines named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch or ditches; *Provided*, That the lines proposed shall not interfere with any other ditch whose rights are prior to those acquired under this chapter and by virtue of said certificate. Nor shall the water of any stream be directed from its original channel to the detriment of any miners, mill men or others along the line of said stream, who may have a priority of right, and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists who may have a prior right to such water along said stream. [S. L. 1884, ch. 24, § 1.]

Ditch company shall sell water.

SEC. 534. Any company constructing a ditch or ditches under the provisions of this chapter shall furnish water to the class of persons using water in the way named in the certificate, as the way the water is designated to be used, whether miners, mill men or farmers, whenever they shall have water in their ditch or ditches unsold, and shall at all times give the preference to the use of the water in said ditch or ditches to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners, or the tribunal transacting county business, as soon as such ditch or ditches shall be completed and prepared to furnish water. [S. L. 1884, ch. 24, § 1.]

Ditch to be kept in good condition.

SEC. 535. Every ditch company organized under the provisions of this chapter shall be required to keep the banks of their ditch or ditches in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch or other property located and held prior to the location of such ditch; and whenever it is necessary to convey any ditch over, or across, or above any lode or mining claim, the company shall, if necessary to keep the water of said ditch out or from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch; *Provided*, That in all cases where the ditch has priority of right by location, the owners of such claim or property shall be compelled to protect themselves from any damages that might be created by said ditch, and the owner of such claim shall be liable for any damages resulting to said ditch by reason of the works or operations performed on such claim or property. [S. L. 1884, ch. 24, § 1.]

Application of four preceding sections.

SEC. 536. The four preceding sections shall apply to all ditch companies already formed and incorporated under the laws of this territory. [S. L. 1884, ch. 24, § 2.]

Certificate of flume company.

SEC. 537. When any company shall organize under the provisions of this chapter to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in section five hundred and one, shall specify as follows: The place of beginning, the termini and the route so near as may be, and the purpose for which such flume is intended, and when organized according to the provisions of this chapter, said company shall have the right of way over the line proposed in such certificate for such flume; *Provided*, It does not conflict with the right of any farmer, fluming, ditching or other company. [C. L. 1876, ch. 34, p. 235, § 32.]

Certificate of bridge or ferry company.

SEC. 538. When any three or more persons shall associate under the provisions of this chapter to form a company for the purpose of constructing a bridge or establishing a ferry over any of the streams of water in this territory, their certificate, in addition to the matters required in section five hundred and one, shall specify as follows: The place where said bridge or ferry is to be built or established, and on what streams, and that the banks on both sides of the stream where the said bridge or ferry is to be built or established are owned by said company, or that they have obtained in writing, the consent of the owners of the banks where the said bridge is to be built, to erect the said bridge or establish the said ferry as aforesaid. [C. L. 1876, ch. 34, p. 235, § 33.]

Bridge or ferry to be kept in good order.

SEC. 539. Any bridge built or established, under the provisions of this chapter, shall, at all times, be kept in good and safe condition for travel, both night and day, unless the same be rendered impassable by reason of flood or high water, and any bridge or ferry so built or established, shall, if destroyed by flood, fire or other causes, be rebuilt or established within a period of nine months from such destruction or the rights acquired under this chapter shall be forfeited and cease to exist. [C. L. 1876, ch. 34, p. 236, § 34.]

Toll rates to be posted.

SEC. 540. The company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on the said bridge or ferry, a board, on which shall be written, painted or printed in a plain, legible manner, the rates of toll, which rates of toll shall have been prescribed by the county commissioners, or the tribunal transacting county business in said county, and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars, and no company formed under the provisions of this chapter, shall demand or receive tolls whenever said bridge or ferry is not in a good and safe condition for travel, and any person having paid toll on such bridge or ferry, and finding the same in a bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as is provided in section five hundred and thirty. [C. L. 1876, ch. 34, p. 236, § 35.]

Certificate of telegraph company.

SEC. 541. Whenever any three or more persons associate under the provisions of this chapter, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments, necessary for the wires; *Provided*, That the same shall not incommode the public in the use of said roads or highways. [C. L. 1876, ch. 34, p. 236, § 38.]

Limitation of time for completion of corporate works.

SEC. 542. Any company formed under the provisions of this chapter for the purpose of constructing any road, ditch, flume, bridge, ferry or telegraph line shall, within six months from the date of their certificate, commence work on such road, ditch, flume, bridge, ferry or telegraph line, as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed; and the time of completion of any such road, bridge, ferry or telegraph line shall not be extended beyond a period of two years, and of any such flume beyond the period of four years from the time work was commenced as aforesaid; and any company failing to commence work within six months from the date of certificate, or failing to complete the same within the time above stated, shall forfeit their claim to that portion of the route upon which they have failed to do the specified work; *Provided*, That this section shall not apply to any ditch or flume for mining purposes constructed through any ground owned by the corporation. [S. L. 1884, ch. 26, § 1. S. L. 1886, ch. 61, § 13.]

General powers of corporations.

SEC. 543. Every corporation under the provision of this chapter, as such, has power:

First—To have succession by its corporate name for the period limited in its certificate of charter;

Second—To sue and be sued, complain and defend in any court of law or equity;

Third—To make and use a common seal, and alter the same at pleasure;

Fourth—To hold, purchase and convey such real and personal estate as the purpose of the corporation may require;

Fifth—To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation;

Sixth—To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock. [C. L. 1876, ch. 34, p. 237, § 40.]

Limitation upon corporate powers.

SEC. 544. The powers enumerated in the preceding section, shall vest in every corporation that shall hereafter be created, although they may not be specified in the certificate, or in the act under which it shall be incorporated, but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated. [C. L. 1876, ch. 34, p. 237, § 41.]

Penalty for damaging corporate property.

SEC. 545. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, railroad, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company, which may be organized under the provisions of this chapter, upon conviction thereof, before any court of competent jurisdiction in the county where the offense shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, which shall be paid into the county treasury for the use of common schools, and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit. [C. L. 1876, ch. 34, p. 237, § 42.]

Issuing notes as money forbidden.

SEC. 546. Nothing in this chapter shall be so construed as to authorize any company organized under the same, to issue notes or bills for circulation as money. [C. L. 1876, ch. 34, p. 237 § 45.]

Companies organized under Dakota laws may re-incorporate.

SEC. 547. Any company organized under and by virtue of any act of the Territory of Dakota, or any association of individuals acting as bodies corporate, may surrender their certificates or articles of association to the secretary of the territory, and become a body corporate and politic under the provisions of this chapter, by complying with all and singular the provisions thereof. [C. L. 1876, ch. 34, p. 237, § 44.]

Condemnation proceedings by railroad and other companies.

SEC. 548. Whenever any road, railroad, ditch, telegraph or fluming company, organized or to be organized, under the provisions of this chapter, or any law of this territory, shall not have acquired by gift or purchase, any land, real estate, or claim required for the construction or maintenance of their road, railroad, ditch, telegraph or flume, or which may be affected by any operation connected with the construction or maintenance of the same, the said corporation may present to the district judge of the judicial district wherein such lands, real estate or claim shall be, a petition signed by the president, attorney or agent of the same, describing with convenient accuracy and certainty, by map or otherwise, the lands, real estate or claims so required to be taken or affected as aforesaid, setting forth the name and residence of each owner or other person interested therein as owner, lessee or incumbrancer, as far as known to such president, attorney or agent, or appearing of record, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and persons interested, for the taking or injuriously affecting such lands, real estate or claims as aforesaid; the said district judge shall have satisfactory evidence that notice of an intended application and the time and place thereof, for the appointment of appraisers between said corporation and the owners and persons interested in such lands, real estate and claims, has been given at least ten days previously, to such owners personally, at their residence, or on the premises, or by publication thereof in a newspaper printed in the county in which such lands, real estate or claims shall lie, or if no newspaper is published in said county, then by posting three or more notices in some public places in the said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county, known to such president, attorney or agent, which notice shall be published at least thirty days prior to the time fixed for the application as aforesaid. The court or judge may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall have proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpœnas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall hear the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate or claims to be taken or affected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taken or injuriously ected as aforesaid, making such deduction or allowance for real benefits or advantages which such owners or parties interested may derive from the construction of said road, railroad, ditch, telegraph or flume. They, or a majority of them, shall make, subscribe and file with the register of deeds of the county in which such real estate or lands shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described with convenient certainty and accuracy. The district judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties, in the county treasury, or other place for that purpose approved by the court, shall make and cause to be entered in the minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the register of deeds office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested, to the said corporation. Upon the entry of such rule, the said corporation shall become seized in fee, or shall have the exclusive right, title and possession of all such lands, real estate or claims described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of and hold and use the same for the purposes of the said road, railroad, ditch, telegraph or flume, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate, or rule of said district judge. If, at any time after an attempted or actual ascertainment of compensation under this chapter, or any purchase by, or donation to, said corporation, of lands or claims for purchases aforesaid, it shall appear that the title acquired thereby; to all or any part of such lands for the use of said corporation, or if said assessment shall fail or be deemed defective, the said corporation may proceed and perfect such title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceeding under this chapter, the district judge may, by rule in that behalf made, authorize the said corporation, if already in possession, and if not in possession, to take possession of, and use said premises during the pendancy and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation, on account thereof; *Provided*, Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained, and in every case where possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day, as compensation for each day actually employed, such compensation to be taxed and allowed by the district judge. If any appraiser so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the district judge. [C. L. 1876, ch. 34, p. 238, § 45.]

For condemnation proceedings by the territory, any city or town, see §§ 499 and 500.

CHAPTER 2.

POWER OF RAILROAD CORPORATIONS TO ISSUE BONDS.

SECTION.
549. Powers conferred and method of exercising them.
550. Consolidation—Mode of effecting same.
551. When consolidation consummated.
552. Effect of consolidation—Rights of creditors.
553. Railroad company may subscribe to capital stock of other company.
554. Power of one railroad company to contract with another.

Powers conferred and method of exercising them.

SEC. 549. Every railroad company organized under the general incorporation laws of this territory shall have power and is hereby authorized to mortgage or execute deeds of trust, in whole or in part, of the real and personal property and franchises, including its lands or other property granted to said company by the United States, or any state or territory, to secure money borrowed by them for the construction and equipment of their roads, and may also issue their corporate bonds in sums not less than one thousand dollars; to make all of said mortgages or deeds of trust payable to bearer or otherwise, negotiable by delivery, bearing interest at rates not to exceed ten per cent. per annum, convertible into stock or not, at the option of the holder, and may sell the same at such rates and prices as they may deem proper, and if said bonds shall be sold below their nominal or par value, they shall be valid and binding upon the company, and no plea of usury shall be put in or allowed by said company in any suit or proceeding upon the same. The principal and interest of said bonds or either of them may be made payable within or without this territory, at such place as may be determined upon by said company. [S. L. 1879, ch. 61, § 1.]

Consolidation—Mode of effecting same.

SEC. 550. Whenever a line of railroad of any railroad company in this territory, or any portion of said line, has been constructed so as to connect with any two or more of such roads, said companies are hereby authorized to consolidate themselves into a single corporation in the manner following: The trustees of the said two or more corporations may enter into an agreement under the corporate seal of each, for the consolidation of said two or more corporations, prescribing the terms or conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of the trustees thereof, which shall not be less than seven; the time and place of holding the first election of trustees; the number of shares of stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations, into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporations shall possess all the powers, rights and franchises conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this title; *Provided*, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid an appraised value of said stock at the date of such consolidation. [S. L. 1879, ch. 61, § 2.]

When consolidation consummated.

SEC. 551. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of the territory, the said two or more corporations (mentioned or referred to in the last two or more preceding sections, or any other law of the territory) shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein. [S. L. 1879, ch. 61, § 3.]

Effect of consolidation—Rights of creditors.

SEC. 552. Upon the election of the first board of trustees of the corporation created by the agreement, in the preceding section mentioned, and by the provisions of this chapter, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, and all and singular the rights and interest in and to every species of property, real, personal and mixed, and things in action shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer, and such new corporation shall hold and enjoy the same, together with right of way and all other rights of property in the same manner and to the same extent as if the said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporations. And the title and the real estate acquired by either of said two or more corporations shall not be deemed to revert or be impaired by means of anything in this chapter contained; *Provided*, That all rights of creditors and all liens upon the property of either of said corporations shall be and hereby are preserved unimpaired; and the respective corporations shall continue to exist as far as may be necessary to enforce the same; *Provided further*, That all debts, liabilities and duties of either company shall henceforth attach to such new corporation, and be enforced to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it. [S. L. 1879, ch. 61, § 4.]

Railroad company may subscribe to capital stock of other company.

SEC. 553. Any railroad company incorporated under the general laws of this territory may at any time by means of subscription to the capital stock of any other company or otherwise, aid such company in the construction of its road for the purpose of forming a connection with the line of road owned by such other company. [S. L. 1879, ch. 61, § 5.]

Power of one railroad company to contract with another.

SEC. 554. Any railroad company, existing in pursuance of law, may lease or purchase any part or all of any other railroad constructed by any other company, or may sell and convey, by deed or otherwise, or may lease to any other railroad company any part or all of its own railroad and franchises, upon such terms and conditions as may be agreed upon between said companies respectively, and any two or more railroad companies whose lines are connected, may perfect any arrangement for their common benefit to assist and promote the object for which they were created. [S. L. 1886, ch. 46, § 1.]

CHAPTER 3.

AID BY COUNTIES TO RAILROAD CORPORATIONS.

SECTION.
555. Commissioners authorized to issue bonds.
556. Terms and execution of bonds—Payments.
557. Registration of bonds—Fees of treasurer.
558. Bonds to be authorized by election.
559. Application by company for aid—Bond election.
560. When bonds to be delivered.
561. Annual tax to pay interest and principal.
SECTION.
562. Contracting powers of railroads—Consolidation.
563. North and south road only to have benefit of this chapter—Albany County excepted.
564. Bonds to be valid obligations.
565. Johnson, Crook, Carbon, Fremont and Sweetwater Counties excepted.

Commissioners authorized to issue bonds.

SEC. 555. The board of the county commissioners of any county in this territory, are hereby empowered to issue bonds of said county, in any sum not greater than five per centum of the taxable property of said county, to aid in the construction of railways, whose proposed line of railway shall be generally a north and a south line, in the manner herein designated; *Provided*, The issue of bonds to any railway company, under the provisions of this chapter, shall in no case exceed the sum of five thousand dollars per mile for the number of miles which such railway company shall construct and operate in said county. [S. L. 1886, ch. 29, § 1.]

Terms and execution of bonds—Payment.

SEC. 556. Any bonds issued under this chapter shall be of denominations not less than five hundred nor more than one thousand dollars, and shall be payable at any place designated by the railway company applying therefor, in the manner provided in this chapter. Said bonds shall be made payable in not less than fifteen nor more than thirty years from the day of their date, and shall bear interest at a rate not exceeding six per centum per annum, which interest shall be payable annually at the place where the principal of said bond is made payable, and each denomination shall be numbered consecutively from one, upwards. Said bonds shall have coupons attached representing the annual interest on each bond; said coupons shall in all cases be detached from the bond before payment, and when paid shall be forthwith cancelled by stamping the word "paid" across the face thereof. Said bonds shall contain a proviso, permitting the board of county commissioners of the county issuing the same, to pay and cancel said bonds, or any part thereof, on or after the beginning of the fifteenth year from the date of issue, at a rate not exceeding par and accrued interest at the time of cancellation; *Provided*, That prior to the payment of any bonds as above provided, the county commissioners shall publish a notice in some newspaper of general circulation in said county, for a continuous period of not less than thirty days, which notice shall state the number of bonds thus called, and the date on which they will be paid, and interest shall cease on said bonds on the said last named date; all bonds shall be issued in the order of their numbers, and shall be redeemed in the same manner. The bonds and interest coupons shall be signed by the chairman of the board of county commissioners, and attested by the county clerk of the county issuing such bonds under the seal of said county; *Provided*, That the interest coupons may be signed by the engraved signatures of the said chairman and clerk. The county treasurer shall certify upon each bond the date it is delivered, and it shall draw interest from that date. [S. L. 1886, ch. 29, § 2.]

Registration of bonds—Fees of treasurer.

SEC. 557. All bonds issued under this chapter, before their issue or delivery, shall be registered in the office of the county treasurer of the county issuing the same, in a book kept by him for that purpose, which registration shall show the number, date, amount, rate of interest, time for which issued, to whom issued, and place of payment of each bond; said registration shall also show the date of cancellation of each bond as the same is paid. For each bond thus registered the county treasurer shall receive the sum of fifty cents as compensation for registering, and for each bond cancelled the sum of fifty cents, said sum to be paid him at the time of said registration and cancellation, by the board of the county commissioners of the county issuing the bonds, from the general fund of said county. [S. L. 1886, ch. 29, § 3.]

Bonds to be authorized by election.

SEC. 558. Before any bonds shall be issued as herein provided, the [illegible]ne shall be ordered by a vote of the qualified electors of said county. [S. L. [illegible]36, ch. 29, § 4.]

Application by company for aid—Bond election.

SEC. 559. When an application in writing shall be made to the county commissioners of any county through which, or a portion of which, it is proposed to construct a railway, signed by the railway company desiring to construct such road, and by fifty qualified electors of the county through which, or a portion of which, it is proposed to build said railway, asking that a vote be taken upon the question of aiding in the construction of such railway, which application shall state the name of the company applying therefor, the amount of its capital stock, the proposed route in general terms, the time the company proposes to commence and finish construction, the approximate number of miles within the county, the number of miles for which subsidy in bonds is asked, the width of gauge, the class of roads, the amount per mile, the time said bonds are to run, the rate of interest they shall bear. In all cases the company applying for subsidy shall file with its application a bond to the county in an amount equal to fifteen per cent. of the subsidy asked, conditioned that the company will commence the construction and complete the number of miles of road for which subsidy is asked within the time stated in its application. The county commissioners shall, within five days after the presentation of such application, call an election of the legal voters of such county, to be held within twenty days thereafter, and shall give notice of such election by publication for at least two successive weeks in each newspaper published in such county, and if no newspaper is published in such county, then notices shall be posted at least fifteen days prior to such election, at the usual places of holding elections in each precinct in such county. Such notice shall recite the application of the railway company for aid in constructing its line through such county, the general route it will follow through the county as near as may be, and the number of miles of road it will have in the county. The only ballots cast at such elections which shall be counted shall be the ones on which shall be written or printed "for the bonds," or "against the bonds." Such election shall be held at the usual places for the holding elections in such county, and shall be conducted by the officers or persons provided by law for holding of elections in such county, and shall in all respects be governed and the result declared according to the rules and regulations provided by law for holding elections in such county; *Provided, however*, no person shall be eligible to vote at such election who was not a legal voter at the last preceding general election held in such county. The votes shall be returned to the county clerk of the county within the time and in the manner now provided by law for transmitting the returns of general elections held in such county. When the returns are all in, or when the time for receiving of the same has expired, the board of county commissioners of the county in which the election is held shall canvass the vote and declare the result on the minutes of their meeting and proceedings, as in other cases, and in case said board shall find that a majority of the votes cast at such election are in favor of said bonds, then and in that case they shall so declare by resolution entered of record, and the issuance of the bonds shall be deemed to have been sanctioned by the electors of such county, and said bonds shall thereupon be issued and delivered to said railway company as provided in the next succeeding section, otherwise not. [S. L. 1886, ch. 29, § 5.]

When bonds to be delivered.

SEC. 560. No bonds shall be delivered to such railway company, nor shall be demandable by such railway company, from the county, until such railway company shall first complete within the limits of the county at least one-fifth of its proposed distance, as named in the application made to the county commissioners, and have trains running thereon and fully equipped to receive and transport freight and passengers. Upon the completion of the one-fifth of the number of miles for which subsidy is asked, of such railway, the county commissioners of the county issuing the bonds shall issue and deliver to such railway company bonds of the county to the amount per mile which shall have been authorized by the electors of said county for the number of miles so completed, and thereafter, as each one-tenth of the number of miles of railway for which subsidy is asked shall be completed, they shall issue and deliver to such company the bonds of the county in the same amount per mile as hereinbefore provided. [S. L. 1886, ch. 29, § 6.]

Annual tax to pay interest and principal.

SEC 561. Whenever any county shall issue its bonds and deliver the same ~~as~~ provided in this chapter, it shall be the duty of the county commissioners of such county to levy and assess a special tax annually upon all taxable property in such county, sufficient to pay the interest coupons upon all such bonds, when the same shall become due, and for the expenses of collecting, remitting and disbursing such bonds, and printing and preparing the same for delivery, and the payment thereof as the same shall become due, and such special tax shall be applied only to the payment of the interest on said bonds as the same shall accrue, and the payment of the principal of said bonds as the same shall become due; *Provided, however*, That no tax shall be levied for the creation of a sinking fund for the payment of said bonds until the expiration of fifteen years after the same shall have been issued. [S. L. 1886, ch. 29, § 7.]

Contracting powers of railroads—Consolidation.

SEC. 562. Any railway company in this territory may be, and it is hereby authorized and empowered to make any running, traffic or business arrangement with any other railway company, to connect with any other railway at any other point in their respective lines or routes, by proper switches and turnouts, as may be agreed upon by them, to unite their capital stock, and to apply any amount of their capital stock to any specified section of their railway as such company or companies shall determine, and to amend their certificate of incorporation by filing a new one in due form of law in lieu of the one on file, to change or assume such corporate name as may be determined upon, to transfer any existing or other subscription of stock in such companies, and the authorized issue of bonds of any county, shall be as binding and legal on such county, as if no consolidation of such company or change of corporate name had been made, and such company may lease its line to any other railway company for such time and on such terms as may be agreed upon. The filing of such acts and proceedings under the hands and seals of the officers of such company, duly acknowledged, with the secretary of the territory, and with the register of deeds in each county through which said line of railway or railways run or propose to run, shall be *prima facie* evidence of all such acts and proceedings, and the certificate of the secretary of the territory, under the seal of the territory, shall be *prima facie* evidence of such proceedings, and of their authorization and regularity. [S. L. 1886, ch. 29, § 8.]

North and south roads only to have benefit of this chapter—Albany County excepted.

SEC. 563. This chapter and the provisions thereof are intended to aid and promote the building of north and south lines of railway in this territory, and shall only apply to railway companies hereafter organized whose lines of railway shall run generally in a north and south direction.

Provided, That this section shall not apply to Albany County, but the aid authorized by this chapter may be extended by said county to any company which may hereafter construct or extend a line of railway in or through said county, extending to, from or through the City of Laramie, in whatever direction the same may run, and section five hundred and fifty-five is so modified in its application to said Albany County as to effectuate this provision. [S. L. 1886, ch. 29, § 9.]

Bonds to be valid obligations.

SEC. 564. The bonds of any county, when issued under the provisions of this chapter, are hereby declared to be, and are hereby constituted, valid and binding obligations on such county. [S. L. 1886, ch. 29, § 10.]

Johnson, Crook, Carbon, Fremont and Sweetwater Counties excepted.

SEC. 565. Nothing in this chapter shall apply to the counties of Johnson, Crook, Carbon, Fremont and Sweetwater. [S. L. 1886, ch. 29, § 11.]

CHAPTER 4.

RELIGIOUS, FAIR, FIRE AND OTHER ASSOCIATIONS.

SECTION.
566. Purposes for which corporations may be formed—Certificate.
567. Corporate existence, how proven.
568. Powers of such corporations—Limitation upon holding property.
569. By-laws—Purposes for which may be adopted.
570. Power to raise money.
571. Dividing stock into shares—Their transfer.
572. Assessments upon shares.

SECTION.
573. Limitation upon dividends.
574. Officers to receive no salary.
575. Powers of trustees of religious societies.
576. Powers of trustees of colleges.
577. Powers of militia companies to impose fines.
578. Control and regulation of fair grounds.
579. Territorial aid to fair associations.
580. Reservation of legislative control over corporations.

Purposes for which corporations may be formed—Certificate.

SEC. 566. Any number of persons, not less than three, may associate themselves together in the manner hereinafter mentioned, for any of the following purposes:

First—For the support of the gospel, or the maintenance of religious worship;

Second—To maintain, hold and keep in repair a house of public worship, with or without a parsonage house appurtenant thereto;

Third—To provide, hold, maintain and keep in repair a place or places for the burial of the dead. The same persons may unite in one association for one or more, or for all of the purposes above mentioned;

Fourth—To establish and maintain a library, or a cabinet of mineralogical or metallurgical specimens, or relating to any other science;

Fifth—To establish and maintain a college, academy or other like institution, for the education of youth;

Sixth—To promote the diffusion of useful information by other means than above mentioned;

Seventh—For the mutual assistance of the members of such society in time of sickness or necessity, and to provide a fund for this purpose by gratuitous contributions of the members thereof from time to time, and for the like incidental benevolent purposes;

Eighth—To establish and maintain hospitals and infirmaries for the cure of the sick;

Ninth—To establish and maintain lodges and chapters of the societies commonly known as the order of Good Templars, and other like benevolent societies;

Tenth—To establish and maintain fire companies in any incorporated city or town;

Elevevth—To establish and maintain independent companies and regiments of militia;

Twelfth—To establish and maintain societies for the preservation of the history and antiquities of this country, or any part thereof;

Thirteenth—To establish and maintain parks, boulevards and other pleasure and sanitary resorts;

Fourteenth—To establish and maintain parks, grounds or race courses, for the trial of speed, development or training of horses, with the right to offer and award premiums;

Fifteenth—To establish and maintain parks or grounds for the exhibition of all kinds of live stock, agricultural, mechanical and mineral products, whether the products of this territory or not, with the right to offer and award premiums;

Sixteenth—To establish and maintain theatres, public halls, gardens, and other places of amusement, not prohibited by the organic act or the laws of Wyoming Territory. The same persons may unite in one association, for one or more, or all purposes mentioned in this chapter. All such persons so desiring to associate themselves for any of the foregoing purposes, shall make, sign, acknowledge, and cause to be filed and recorded in the same manner as provided in section five hundred and one, duplicate certificates setting forth the name by which they have associated themselves, the purpose for which the association is formed, the number of the trustees, and the names of the trustees who shall manage the affairs of the association during the first year, or until the next annual election, the place at which the corporation will carry on its business, or pursue the purpose for which it is formed, and the duration of such corporation, which may be perpetual. [C. L. 1876, ch. 34, p. 241, § 1. S. L. 1879, ch. 24, § 1.]

Corporate existence, how proven.

Sec. 567. Upon the filing of such certificate, the persons therein named, their associates, successors and assigns, shall be and become a body corporate and politic by the name in such certificates mentioned, and its existence, powers and purposes may be proven in like manner as in the case of other corporations, as provided in chapter one of this title. [C. L. 1876, ch. 34, p. 242, § 2.]

Powers of such corporations—Limitation upon holding property.

Sec. 568. Every such corporation shall have power to sue and be sued, plead and be impleaded, in all courts of law and equity whatsoever; to have and use a common seal, and alter the same at pleasure; to contract and be contracted with in pursuance of the powers of such corporation; to purchase or receive by gift, or otherwise, personal estate, such as may be necessary or proper for the purposes of such corporation, and to dispose of the same; to purchase or receive by gift, grant, devise or otherwise, real estate, such as may be necessary or proper for the purposes of the corporation, but not exceeding as follows: Corporations formed for any of the purposes specified in the first, second, third, seventh, eighth and ninth sub-divisions of section five hundred and sixty-six, not exceeding fifty thousand dollars in value; corporations formed for the purposes named in the tenth and eleventh sub-divisions of said section, not exceeding ten thousand dollars in value. [C. L. 1876, ch. 34, p. 242, § 3.]

For limitation on power of religious corporations to hold real estate, see § 1890 U. S. Rev. Stat.

By-laws—Purposes for which may be adopted.

Sec. 569. The members of every such corporation shall have power, when organized, to adopt by-laws for the following purposes: To regulate the time and places of holding their meetings, and the manner of calling special meetings; to regulate the management of the affairs and property of such corporation; to regulate the number of trustees and the other officers of the corporation, and their powers and duties; to regulate the qualifications, choice, powers and duties of the servants, teachers, and employes of such corporations; to prescribe the qualifications of persons desiring admission to such corporation, the manner of admission of new members, and the discharge or expulsion of members; to provide for the manner of forfeiting or selling of the shares in such corporation of any member failing to pay any assessment thereon, and all other by-laws and regulations necessary in promoting the objects and purposes of such corporation, so that the same be not inconsistent with the organic act and laws of this territory, or the articles of association of such corporation. [C. L. 1876, ch. 34, p. 242, § 4.]

Power to raise money.

Sec. 570. Any such corporation shall have power to raise money for the purposes of the corporation, in such manner as may be agreed upon by the articles of association or their by-laws. [S. L. 1876, ch. 34, p. 242, § 5.]

Dividing stock into shares—Their transfer.

Sec. 571. Any such corporation may, by their articles of association or by-laws, divide their stock and property into shares, and determine the terms upon which such shares of stock shall be held by the members, and the manner in which the same shall be sold and transferred. [S. L. 1876, ch. 34, p. 242, § 6.]

Assessments upon shares.

SEC. 572. Where stock and common property of any such corporation shall be so divided into shares, any such corporation, or the trustees thereof, as the by-laws may provide, may, at any meeting called for the purpose, raise money for the purposes of the corporation by assessment upon the shares of such stock; and the payment of such assessment may be enforced by sale or forfeiture of the shares of such stock as the by-laws may provide, but no other estate or property of any stockholder shall be liable to be seized or sold on execution or otherwise, for the non-payment of any assessment. [C. L. 1876, ch. 34, p. 243, § 7.]

Limitation upon dividends.

SEC. 573. No dividend shall be declared or paid upon the stock of any such corporation, until the final dissolution thereof, excepting associations incorporated under sub-divisions thirteen, fourteen, fifteen and sixteen of section five hundred and sixty-six. [C. L. 1876, ch. 34, p. 243, § 8. S. L. 1879, ch. 24, § 2.]

Officers to receive no salary.

SEC. 574. No officer of any corporation formed under the provisions of the first, second, third, fifth, seventh, eighth or ninth sub-divisions of section five hundred and sixty-six, shall receive any salary or remuneration from such corporation for his services as such officer, nor shall any such officer enter into any contract with the corporation during the time of his remaining in office. [C. L. 1876, ch. 34, p. 243, § 9.]

Powers of trustees of religious societies.

SEC. 575. The board of trustees of any religious society formed under the provisions of the first sub-division of section five hundred and sixty-six, shall have and exercise such powers as are or may be conferred upon them by the by-laws of such corporation, according to the usage and discipline of such society in their temporal affairs. [C. L. 1876, ch. 34, p. 243, § 10.]

Powers of trustees of colleges.

SEC. 576. The board of trustees of any corporation formed for the purposes mentioned in the fifth sub-division of section five hundred and sixty-six, shall have power to prescribe reasonable by-laws for the government of the youth attending at the institution of learning maintained by such corporation, and to confer such degrees and diplomas as are usually conferred by like institutions. [C. L. 1876, ch. 34, p. 243, § 11.]

Powers of militia companies to impose fines.

SEC. 577. Corporations formed under the provisions of the eleventh sub-division of the said section five hundred and sixty-six, shall have power to impose by their by-laws, pecuniary fines not exceeding one hundred dollars in any case, for the breach of any by-laws or military regulations of such corporation, and all such fines may be recovered by action before any justice of the peace of the county wherein the headquarters of such military company or regiment are. Every military company and regiment organized under the provisions of said section, shall, at all times, be subject to the command of the governor of the territory. [C. L. 1876, ch. 34, p. 243, § 12.]

Control and regulation of fair grounds.

SEC. 578. The principal officers of such society or societies, incorporated under sub-divisions thirteen, fourteen and fifteen of section five hundred and sixty-six, shall have full jurisdiction and control of the grounds on which the society or societies may exhibit, and all streets and alleys, and other grounds adjacent to the same, during all exhibitions, so far as may be necessary to preserve and keep good order, and to exclude therefrom all other exhibitions, booths, stands or other temporary places for the retail or sale of any kind of spirituous or fermented liquors, or other articles, that they may deem objectionable or offensive to said exhibition. The president of any such society shall have the power to appoint and employ any necessary police to assist in preserving the peace or arresting offenders. And all policemen thus appointed shall be vested, during the continuance of such exhibition, with the ordinary powers and authority of constables. Any person who wilfully and without leave, enters any fair grounds, parks or premises, during exhibition, or by fraudulently receiving and using the tickets or badge of another, without the proper payment and compliance with the rules of any such organization or society, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court shall be liable to a fine of not less than one hundred dollars; and in case of non-payment of the fine, to imprisonment in the county jail not less than one nor more than thirty days. And such offender may be tried before any justice of the peace most convenient in the county. [S. L. 1879, ch. 24, § 3.]

Territorial aid to fair associations.

SEC. 579. Any corporation now existing or hereafter organized for the purpose of establishing and maintaining fair grounds in any county within this territory, and promoting the agricultural and manufacturing interests of the county and of the territory, by awarding premiums for the improvement of the soil, crops, tillage, manufactories, implements, live stock, articles of domestic industry and such other articles, productions and improvements as such corporation may deem proper, shall be entitled to receive from the territory twenty-five per cent. of the amount paid in premiums by such corporation in each year; *Provided*, That the amount paid to any one corporation by the territory shall not exceed twenty-five per cent. on ten thousand dollars. Upon receipt of the sworn statement from the treasurer of the corporation, of the total amount paid out in premiums in each year by such corporation, the auditor shall draw his warrant on the territorial treasurer in favor of such corporation for the twenty-five per cent. of the total amount paid out in premiums by such corporations for that year. [S. L. 1886, ch. 84, § 1.]

Reservation of legislative control over corporations.

SEC. 580. This chapter may, at any time, be repealed, altered or amended by the legislature, and corporations formed under the provisions hereof shall be subject to such regulations and alterations as the legislature may hereafter make. [S. L. 1876, ch. 34, p. 243, § 13.]

CHAPTER 5.

CERTAIN CHURCH AND ELEEMOSYNARY ASSOCIATIONS.

SECTION.
581. What bodies may incorporate.
582. Organization meeting.
583. Adoption and filing of articles.
584. Members of corporation.
585. Incorporation of eleemosynary institutions.
SECTION.
586. Church societies may re-incorporate.
587. General laws to apply to associations under this chapter.
588. By-laws.

What bodies may incorporate.

SEC. 581. Churches, parishes and societies of all religious bodies, sects or denominations in this territory, having an Episcopate, Presbytery, Synod, Conference or other governing body with spiritual jurisdiction extending over the whole territory or part thereof, being at least six counties, may become incorporated for religious, missionary, educational or charitable purposes in the manner hereinafter provided. [S. L. 1884, ch. 73, § 1.]

Organization meeting.

SEC. 582. The chief or presiding or executive officer of the religious bodies, sects or denominations mentioned in the preceding section may, at such place in this territory as he may appoint for the purpose, convene a meeting of himself and some other officer or officers, subordinate to himself, but having general jurisdiction throughout the territory, or part of the territory aforesaid, and one or more priests, ministers or clergymen of the proposed church, parish or society, and at least two laymen resident within the limits thereof, of which meeting the said chief or presiding or executive officer shall be president and one of the other persons present shall be secretary. [S. L. 1884, ch. 73, § 2.]

Adoption and filing of articles.

SEC. 583. The said five or more persons being so convened and organized as a meeting, shall adopt articles of incorporation which shall fix:

First—The name of the church, parish or society and the place of its location;

Second—The object and purpose of said church, parish or society;

Third—The amount of debts which it shall be competent to contract, beyond which amount the corporation have no power to contract debts binding at law or in equity upon it, its members or its property;

Fourth—The manner in which it may contract and become bound for debts and may convey, encumber or change its property;

Fifth—The manner in which the succession of the members of said corporation shall be regulated and vacancies in their number filled;

Sixth—The time of the commencement and the termination of the corporation;

Seventh—By what officers its affairs shall be conducted;

Which articles, being subscribed and acknowledged by the persons present at said meeting and filed in the office of the secretary of the territory, and recorded in the office of the county clerk of the county where such church, parish or society shall be located, whereupon such corporation shall be competent to transact all business in and by its corporate name. [S. L. 1884, ch. 73, § 3.]

Members of corporation.

SEC. 584. The persons attending said meeting shall be the corporators and members of the corporation until their places may be supplied by and under the provisions of the articles of incorporation. [S. L. 1884, ch. 73, § 4.]

Incorporation of eleemosynary institution.

SEC. 585. If any body of christians has or shall have, according to its order or mode of government, an organization, whether known as synod, presbytery, conference, episcopate or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this territory, and its authorities shall desire to engage in work of education, benevolence, charity and missions, which works shall be of like extensive operation and benefit, and not of limited or local service, and they shall deem an incorporation convenient for the more successful operation of said works, all, or any of them, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manners and with the powers hereinbefore provided for the incorporation of a church, congregation or society. [S. L. 1884, ch. 73, § 5.]

Church societies may re-incorporate.

SEC. 586. Any incorporation of a church, parish or religious society now existing in this territory, under or by virtue of any law thereof now in force, may be re-incorporated under and by virtue of the provisions of this chapter; *Provided*, That such church, parish or religious society shall by a majority vote of all the members thereof, who shall attend at a meeting called for the purpose of taking action upon the subject of re-incorporation; such meeting shall be called by notice given by the pastor, minister or clergyman of said church, parish or religious society, at some regular public service thereof, at least one week previous to such meeting. When any such incorporation shall have been re-incorporated as herein provided for, then in that case, the new corporation so formed, shall be held to be the legal successor of the incorporation so re-incorporating, and as such shall be held and construed in law and equity, to be the owner and holder of all the property, rights and frachises of the corporation of which it is the successor. [S. L. 1884, ch. 73, § 6.]

General laws to apply to associations under this chapter.

SEC. 587. Corporations organized under the provisions of this chapter shall be subject to the laws or this territory in respect of corporations which are applicable to them, save as herein expressly provided. [S. L. 1884, ch. 73, § 7.]

By-laws.

SEC. 588. Every incorporation under this chapter shall be authorized to make such by-laws as may be necessary to carry into effect fully all the purposes of such incorporation; *Provided*, The same be not in conflict with the constitution of the United States, the laws of congress or of this territory. [S. L. 1884, ch. 73, § 8.]

CHAPTER 6.

SECRET SOCIETIES.

SECTION.
589. What societies may incorporate.
590. Certificate of incorporation.
591. Powers as to real property.
592. By-laws.
593. Powers as to personal property.
594. Dissolution, how effected.
595. Certain unincorporated bodies may hold and convey realty.

SECTION.
596. How suits brought and defended by such bodies.
597. Chapter made applicable to odd fellows.
598. Made applicable to knights of pythias.
596. Made applicable to knights of labor.

What societies may incorporate.

SEC. 589. Any number of persons, not less than seven, may voluntarily associate themselves together for either of the following purposes: To organize masonic lodges, royal arch chapters, commanderies of knights templar, councils of royal and select masters, lodges of perfection, councils of princes of Jerusalem, chapters of rose croix, consistories of princes of the royal secret, subject to the regulations of their respective grand bodies, according to the constitutions and usages of said masonic fraternity. Also the ancient order of jolly fellows and the Emmet monument association. [C. L. 1876, ch. 34, p. 243, § 1.]

Certificate of incorporation.

SEC. 590. Any such masonic body that may wish to become incorporated under and by virtue of this chapter, shall file in the office of the secretary of the territory and the office of the register of deeds of the county in which such masonic body shall be located, a certificate in writing, setting forth the name of such masonic body, together with its number (according to masonic usage), and the place where the same shall be held, which certificate shall be signed by the presiding officer and secretary, and attested by the seal of such masonic body, and such masonic body or association having filed the certificate required by this chapter, shall be deemed and held a body corporate and politic, under the name and styles stated in such certificate, and may sue and be sued in all courts of record in this territory, and shall have power to contract and be contracted with, and use a common seal. [C. L. 1876, ch. 34, p. 244, § 2.]

Power as to real property.

SEC. 591. Any masonic or other body incorporated under this chapter, may take, by purchase, grant, devise, gift or otherwise, any town lot or tract of land, may sell and dispose of the same, and execute deeds of conveyance, signed by the presiding officer, secretary and treasurer, or by such officers or persons as may be prescribed by the by-laws or rules and regulations of such body, whenever authorized by such body, and all such deeds of conveyance shall have attached thereto the seal of such body. [S. L. 1884, ch. 23, § 2.]

By-Laws.

SEC. 592. Any such masonic body organized under the provisions of this chapter may make all needful by-laws and regulations necessary to carry out the provisions of this chapter, and not inconsistent with the laws and regulations of such bodies or their respective grand bodies under which the same may be holden, and not inconsistent with the constitution of the United States and the organic act and laws of this territory. [C. L. 1876, ch. 34, p. 244, § 4.]

Powers as to personal property.

SEC. 593. Any such masonic body may hold and possess personal property, and sell and dispose of the same. [C. L. 1876, ch. 34, p. 244, § 5.]

Dissolution, how effected.

SEC. 594. If at any time the members of the said masonic bodies so incorporated under this chapter, wish to dissolve such corporations, they may do so by a majority vote of its members, and the presiding officer, secretary and treasurer of such body, shall file a certificate of such dissolution with the secretary of the territory and with the register of deeds of the county where such body is located; and the filing of such certificate shall be held and deemed to dissolve such corporation, but shall not affect any suit which may be pending against such corporation, nor deprive any person or persons of the right of action against such masonic body on any cause of action existing at the time of such dissolution. [C. L. 1876, ch. 34, p. 244, § 6.]

Certain unincorporated bodies may hold and convey realty.

SEC. 595. Any of the foregoing masonic bodies, duly chartered by the respective grand bodies according to the laws, constitutions and usages of the masonic fraternity, and not wishing to become a corporate body under the provisions of this chapter, may take and hold real estate for their use and benefit, by purchase, grant, devise, gift or otherwise, in and by the name and number of said body, according to the respective registers of the grand body under which the same may be holden; and the presiding officer of such body, together with the secretary thereof, may make conveyances of real estate belonging to such body when authorized by a majority of all the members of said body under such regulations as the said masonic body or its grand body may see fit to make; but all such conveyances shall be attested by the seal of said subordinate body. [C. L. 1876, ch. 34, p. 244, § 7.]

How suits brought and defended by such bodies.

SEC. 596. Should it become necessary at any time to protect the rights of such masonic body in and to the real estate and personal property, said body not being incorporated under this chapter, the presiding officer thereof may bring suit in his own name, for the benefit of the masonic body over which he presides, in any of the courts of record of this territory having original jurisdiction, and may prosecute or defend the same in the supreme court of the territory. [C. L. 1876, ch. 34, p. 245, § 8.]

Chapter made applicable to odd fellows.

SEC. 597. This chapter shall be deemed to apply to the independent order of odd fellows as well as the masonic fraternity, and any subordinate or grand lodge of odd fellows in this territory, may organize and become a body corporate under the provisions of this chapter, in the same manner as masonic bodies, and may also take, hold and convey property and do all other acts, and have all the privileges conferred by this chapter on masonic bodies. [C. L. 1876, ch. 34, p. 245 § 9.]

Made applicable to knights of pythias.

SEC. 598. This chapter shall be deemed to apply to the order of knights of pythias, and to all other secret benevolent or benevolent orders of societies, and any subordinate or grand lodge of knights of pythias, or of any other secret benevolent or benevolent order or society in this territory, may organize and become a body corporate under the provisions of this chapter, in the same manner as masonic bodies, and may also take, hold and convey property, and do all other acts and have all the privileges conferred by this chapter on masonic bodies. [S. L. 1884, ch. 23, § 1.]

Made applicable to knights of labor.

SEC. 599. This chapter shall be deemed to apply to the order of knights of labor and to all or any subordinate or grand lodge or assembly of the knights of labor in Wyoming, and they shall have all the rights and privileges conferred by this chapter upon the masonic and knights of pythias orders or bodies. [S. L. 1886, ch. 15, § 1.]

CHAPTER 7.

FOREIGN CORPORATIONS.

SECTION.
600. Certificate or charter to be filed with secretary and register of deeds.
601. Liability of officers, etc., in case of failure.
SECTION.
602. Duties and fees of register—Copies as evidence.

Certificate or charter to be filed with secretary and register of deeds.

SEC. 600. Every incorporated company, incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this territory (except insurance companies) and now or hereafter doing business within this territory, shall, within thirty days after commencing so to do business, file in the office of the secretary of this territory and also file in the office of the register of deeds of the county within which its business is conducted, a copy of its charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law, duly certified and authenticated by the proper authority of such foreign state, kingdom or territory; *Provided*, That every foreign corporation, that had, prior to the twelfth day of March, eighteenth hundred and eighty-six, complied with the statutes of this territory regulating corporations and had prior to that time been doing business in this territory by virtue thereof, is hereby exempted from filing a copy of its charter of incorporation or certificate of incorporation, as the case may be, in the office of the secretary of the territory. [C. L. 1876, ch. 34, p. 245, § 1. S. L. 1877, p. 73, § 40. S. L. 1886, ch. 76, § 2; ch. 108, §§ 1 and 2.]

Liability of officers, etc., in case of failure.

SEC. 601. A failure to comply with the provisions of this chapter shall render each and every officer, agent and stockholder of any such corporation so failing therein, jointly and severally, personally liable on any and all contracts of such company, made or to be performed within this territory. [C. L. 1876, ch. 34, p. 245, § 2.]

Duties and fees of register—Copies as evidence.

SEC. 602. The several certificates, statutes and charters mentioned in section six hundred, shall be by the register of deeds filed and preserved in his office, as a part of the records thereof; and he shall be entitled to receive a fee of one dollar for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by such register of deeds, under his seal of office, shall be received in all courts of this territory as sufficient evidence of the existence and corporate character of such incorporations, and of all their powers, duties and liabilities, and the originals thereof, may in like manner be used in evidence of these matters with like effect. [C. L. 1876, ch. 34, p. 245, § 3.]

CHAPTER 8.

INSURANCE CORPORATIONS.

SECTION.

603. Formation of insurance company—Certificate.
604. Record of certificate.
605. Capital stock—Assets required.
606. When authorized to commence business.
607. Board of directors.
608. Investment of funds.
609. Certificate of insurance commissioner.
610. Specific corporate powers—Restrictions.
611. Annual meeting of stockholders.
612. Organization of board of directors.
613. Appointment of minor officers—By-laws.
614. Execution of contracts and policies.
615. Transfers of stock.
616. Increase of capital stock.
617. Limitation upon dividends.
618. Limitation upon holding and conveying real estate.
619. Deposit of securities and notes.
620. Settlement of losses.
621. Mutual companies to use the word "mutual" in name.
622. Annual statement of company's condition required.
623. Commissioner may inquire into company's affairs.
624. Statement of notes held as assets.
625. Conditions upon which foreign companies may do business.
626. Certificate of authority to do business necessary.
627. Annual renewal of statement by foreign company.
628. Matters to be set forth in insurance advertisements.
629. Duties of existing companies.
630. Examination of condition of companies—Duty when capital impaired.
631. Liability of directors.
632. Duty of commissioner when assets insufficient.
633. Commissioner may revoke certificate.
634. Compensation of commissioner.
635. Foreign companies—Inter-state comity.
636. Publication of commissioner's certificate.
637. Companies to pay expense of examination—Control of delinquent companies.
638. Commissioner to furnish printed forms for statement.
639. Companies restricted to authorized business.
640. Mutual associations.
641. General laws not to be applied to insurance companies.
642. Construction of capital stock—Secret societies excepted.

Formation of insurance company—Certificate.

SEC. 603. That hereafter, when any number of persons associate themselves together for the purpose of forming an insurance company, they shall publish a notice of such intention, once in each week, for four successive weeks, in some public newspaper, in the county in which such insurance company is proposed to be located, and they shall also make a certificate under their hand, specifying the name assumed by such company and by which it shall be known, the object for which said company shall be formed, the amount of its capital stock, and the place where the principal office of said company shall be located, which certificate shall be acknowledged before and certified by some notary public or clerk of court of record, and forwarded to the territorial insurance commissioner, who shall submit the same to the territorial attorney for examination, and if it shall be found by the territorial attorney to be in accordance with the provisions of this chapter, and not in conflict with the constitutions and laws of the United States and this territory, he shall make certificate of the facts and return it to the territorial insurance commissioner, who shall reject the name or title applied for by any company when he shall deem the same too similar to any one already appropriated by any other company, or likely to mislead the public. [S. L. 1877, p. 55, § 1; S. L. 1884, ch. 48, § 3; S. L. 1886, ch. 76, § 1.]

Record of certificate.

SEC. 604. When the said certificate of the said company shall have received the approval of the territorial insurance commissioner, the said company shall cause the same to be recorded as now required by law for recording articles of incorporation; and said persons, when incorporated and having in all respects complied with the provisions of this chapter, are hereby authorized to carry on the business of insurance, as named in such certificate of incorporation, and by the name and style provided therein, and shall be deemed a body corporate, with succession, they and their associates, successors and assigns, and shall be capable of suing and being sued in any court of law or equity in this territory. [S. L. 1877, p. 56, § 2; S. L. 1884, ch. 48, § 3.]

Capital stock—Assets required.

SEC. 605. No joint stock company shall be incorporated under the provisions of this chapter with a smaller capital than three hundred thousand dollars, nor more than one million dollars, as may be specified in the certificate of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital at least fifty per cent. shall be fully paid up in cash, and that of the remainder of its capital, there are in its possession notes of its stockholders, secured by at least one surety, or by mortgages on unincumbered real estate within this territory, worth at least twice the amount of such notes, which notes or other security shall be approved by the territorial insurance commissioner; nor shall any company on the plan of mutual insurance, commence business in this territory until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which notes of solvent parties, founded upon actual and bona fide application for insurance, shall have been received; no one of the notes received as aforesaid shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk or made by the same person or firm, except when the whole amount of such notes does not exceed the sum of five hundred dollars, nor shall any note be regarded or represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company, and no notes shall be accepted as part of such capital stock, unless the same shall be accompanied by a certificate of the county clerk of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same, in property not exempt from execution by the laws of this territory, and no such note shall be surrendered while the policy for which it was given continues in force. [S. L. 1877, p. 56, § 3. S. L. 1884, ch. 48, §§ 3 and 5.]

When authorized to commence business.

SEC. 606. Having published the notice and filed publisher's affidavit of the publication thereof with the territorial insurance commissioner, together with the certificate, as required by section six hundred and three, the persons named in the certificate of incorporation, or a majority of them, shall be commissioned to open books for the subscription of stock to the company, at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed; or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then open books to receive propositions and enter into agreement in the manner and to the extent specified in the last preceding section. [S. L. 1877, p. 57, § 4. S. L. 1884, ch. 48, § 3.]

Board of directors.

SEC. 607. The affairs of any company, organized under the provisions of this chapter, shall be managed by not more than twenty-one, nor fewer than five directors, all of whom shall be stockholders. Within thirty days after the subscription books shall have been filled, a majority of the subscribers shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote, and the directors thereof shall continue in office until their successors have been duly chosen and have accepted the trust. [S. L. 1877, p. 57, § 5.]

Investment of funds.

SEC. 608. It shall be lawful for any insurance company, organized under this chapter or incorporated under any law of the territory, to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages, on unincumbered real estate within the Territory of Wyoming, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies, and the policy or policies transferred to said company, and also in stocks in this territory, or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this territory, which may have been heretofore authorized to be issued by the legislature of this territory, and to lend the same, or any part thereof, on the security of such stocks, or lands, or treasury notes, or upon bonds and mortgages as aforesaid, and not otherwise, and to change and re-invest the same in like securities, as occasion from time to time may require, but any surplus money over and above the paid up capital stock of any such company, organized under this chapter or incorporated under any law of this territory, may be invested in or loaned upon the pledge of public stocks of the United States or any of the States, or stocks, bonds or other evidences of indebtedness of any solvent, dividend-paying institutions incorporated under the laws of this territory or the United States, except their own stocks; *Provided always*, That the current market value of such stock, bonds or other evidences of indebtedness shall be at all times, during the continuance of such loans, at least twenty per cent. more than the sum loaned thereon. [S. L. 1877, p. 57, § 6.]

Certificate of insurance commissioner.

SEC. 609. Upon receiving notification that the requirements of the preceding section have been complied with, the territorial insurance commissioner shall make an examination, or cause one to be made by some disinterested person, officially appointed by him for that purpose, and if it shall be found (if the examination shall be made other than by the auditor, then the finding shall be certified under oath) that the capital herein required by the company named, according to the nature of the business proposed to be transacted by such company, has been paid in and possessed by it in money, or in such stock, notes, bonds or mortgages as are required by this chapter, then he shall so certify, and if the examination be made by other than the insurance commissioner, then the finding shall be certified under oath; or if it is proposed to be a mutual insurance company, that it has received and is in acutual possession of the capital, premiums or bona fide engagements of insurance, or the securities, as the case may be, to the extent and value required by this chapter, the name and residence of the maker of each premium note forming part of the capital of any such proposed mutual insurance company and the amount of such notes shall be returned to the insurance commissioner. The corporators or officers of any such company, or proposed company, contemplated by this chapter, shall be required to certify under oath, to the territorial insurance commisioner that the capital exhibited to the person making the examination directed in this section, was *bona fide* property of the company so examined; the certificates above contemplated shall be filed in the office of said insurance commissioner, who shall thereupon deliver to such company a certified copy of the same, with his written permission for them to commence business as proposed in their written certificate of incorporation, which, on being placed on record in the office of the recorder of the county in which the company is to be located, by the recorder, in a book prepared by him for that purpose, shall be their authority to commence business and issue policies, and such certified copy of said certificate may be used in evidence for or against said company with the same effect as the originals. [S. L. 1877, p. 58, § 7. S. L. 1884, ch. 48, § 3.]

Specific corporate powers—Restrictions.

SEC. 610. It shall be lawful for any company, organized under this chapter or doing business in this territory:

First—To insure houses, buildings and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be;

Second—To make insurance on the health of individuals and against the personal injury, disablement or death, resulting from traveling, or general accident by land or water;

Third—To insure the fidelity of persons holding places of public or private trust;

Fourth—To receive on deposit and insure the safe keeping of books, papers, moneys, stocks, bonds and all kinds of personal property;

Fifth—To insure horses, cattle and other stock against loss or damage by accident, theft or any unknown or contingent event whatever, which may be the subject of legal insurance; to lend money on bottomry, or respondentia, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan or loans which it may make on mortgages, bottomry or respondentia, and generally to do and perform all other matters and things proper to promote these objects; *Provided*, That no company shall be organized to issue policies of insurance for more than one of the above five mentioned purposes, and no company that shall have been organized for either one of said purposes shall issue policies of insurance for any other; and no company, organized under this chapter or transacting business in this territory, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. of its paid up capital, nor to write on risk within the corporate limits of any one city an amount representing more than the paid up capital of the company, unless the excess shall be insured by the same in some other good and reliable company or companies; *And provided*, That the resriction as to the amount of risk any company shall assume shall not apply to companies organized to guarantee the fidelity of persons in places of public or private trust, nor to companies that receive on deposit and guarantee the safe keeping of books, moneys and papers and other property. [S. L. 1877, p. 59, § 8.]

Annual meeting of stockholders.

SEC. 611. The annual meeting for the election of directors shall be holden during the month of January, as the by-laws of the company may direct; *Provided, however*, That if for any cause the stockholders shall fail to elect at any annual meeting, then they may hold a special meeting some day subsequent thereto for that purpose, by giving thirty days notice thereof, in some newspaper in general circulation in the county in which the principal office of the company shall be located, and the directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors, duly elected, shall have accepted. [S. L. 1877, p. 60, § 9.]

Organization of board of directors.

SEC. 612. The directors shall choose, by ballot, a president from their own number, and shall fill all vacancies which shall arise in the board or in the presidency thereof, and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter. [S. L. 1877, p. 60, § 10.]

Appointment of minor officers—By-laws.

SEC. 613. The directors of any such company shall have power to appoint a secretary and any other officer or agent necessary for transacting the business of the company, paying such salaries and taking such securities as they may deem reasonable; they may ordain and establish such by-laws and regulations not inconsistent with this chapter or with the constitution and laws of the United States and of this territory, as shall appear to them necessary for regulating and conducting the business of the company, and it shall be their duty to keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders and to the inspection of persons invested by law with the right thereof. [S. L. 1877, p. 60, § 11.]

Execution of contracts and policies.

SEC. 614. All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company, but such policies shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary thereof. [S. L. 1877, p. 61, § 12.]

Transfers of stock.

SEC. 615. Transfers of stock may be made by any stockholder, or his legal representative, subject to such restrictions as the directors shall from time to time establish in their by-laws, except as hereinafter provided. [S. L. 1877, p. 61, § 13.]

Increase of capital stock.

SEC. 616. Whenever any company, organized under this chapter with less than the maximum capital limited in section six hundred and five, shall, in the opinion of the directors thereof, require an increased amount of capital, they shall, if authorized by the holders of a majority of the stock to do so, file with the territorial insurance commissioner a certificate setting forth the amount of such desired increase, not exceeding said maximum, and thereafter such company shall be entitled to have the increased amount of capital fixed by said certificate, and the examination of securities composing the capital stock thus increased shall be made in the same manner as provided in section six hundred and nine for the capital stock first paid in. [S. L. 1877, p. 61, § 14. S. L. 1884, ch. 48, § 3.]

Limitation upon dividends.

SEC. 617. It shall not be lawful for the directors, trustees or managers of any insurance company, organized under this chapter or incorporated under any law of this territory, to make any dividend except from the surplus profits arising from their business, and in estimating such profits there shall be reserved therefrom a sum equal to fifty per cent. of the amount received as premiums on unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums, and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks and book accounts, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied and upon which interest shall not have been paid; and in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividends made contrary to these provisions shall subject the company making it to a forfeiture of their charter. [S. L. 1887, p. 61, § 15.]

Limitation on holding and conveying real estate.

SEC. 618. No company, organized under this chapter, shall purchase, hold or convey any real estate, save for the purpose and in the manner herein set forth, to wit:

First Such as shall be requisite for its convenient accommodation in the transaction of its business;

Second—Such as shall have been mortgaged to it in good faith by way of security for loans, previously contracted, or for money due; or

Third—Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due; or

Fourth- Such as shall have been purchased at sales or upon judgments, decrees or mortgages obtained or made for such debts, and it shall not be lawful for any such company to purchase, hold or convey real estate in any other case, or for any other purpose, or acquired in any other manner, except that it may convey real estate which shall be found in the course of its business, not necessary for its convenient accommodation in the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same shall have been deemed by the territorial insurance commissooner unnecessary for such accommodation, unless the company shall procure a certificate from the said insurance commissioner that the interest of said company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as the said insurance commissioner shall direct in said certificate. [S. L. 1887, p 62, § 16. S. L. 1884, ch. 48, § 3.]

Deposit of securities and notes.

SEC. 619. All notes deposited with any mutual insurance company, at the time of its organization, as provided for in this chapter, shall remain security for losses and claims until the accumulation of profits, invested as required by this chapter, shall equal the amount of cash capital required to be possessed by stock companies organized under this chapter, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance company subsequent to its organization, in addition to the cash premiums, or any insurance effected with such company may, after the expiration of the time of such insurance, or upon the cancellation by the company of the policy, be relinquished and given to the maker thereof, or his legal representative, upon his paying his proportion of losses and expenses which may have accrued thereon during such term; the directors or trustees of any such company shall have the right to determine the amount of the note to be given, in addition to the cash premiums, by any person insured in such company, and every person effecting insurance in any mutual company, and also their heirs, executors, administrators and assigns,.continuing to be so insured, shall thereby become members of said company during the period of insurance, and shall be bound to pay for losses and such necessary expenses, as aforesaid, accruing to said company, in proportion to his or their deposit note or notes: *Provided*, That any person insured in any mutual company, except in the case of notes required by this chapter to be deposited at the time of its organization, may at any time return the policy for cancellation, and upon payment of the amount due at such time upon his premium note, shall be discharged from further liability thereon. [S. L. 1877, p. 62, § 17.]

Settlement of losses.

SEC. 620. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portions of such loss and publish the same in such manner as they shall deem proper or the bylaws shall have prescribed, but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the company within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after personal demand, or by letter, for payment shall have been made, neglect or refuse to pay the sum assessed upon him, as proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note or notes, with cost of suit; but execution shall issue for assessments and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which such assessment was made; if the whole amount of deposit notes shall be insufficient to pay the loss occasioned, the sufferers insured by the said company shall receive, toward making good their respective losses, a proportionate share of the whole amount of said notes, according to the sums to them respectively insured, but no member shall ever be required to pay for any loss more than the whole amount of his deposit note or notes. [S. L. 1877, p. 63, § 18.]

Mutual companies to use word "mutual" in name.

SEC. 621. Every insurance company hereafter organized as provided in this chapter shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt, and every company doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by stock companies. [S. L. 1877, p. 64, § 19.]

Annual statement of company's condition required.

SEC. 622. It shall be the duty of the president, or of the vice-president and secretary, of each company organized under this chapter, or incorporated under any laws of this territory, or doing business in this territory, annually, on the first day of January of each year, or within sixty days thereafter, to prepare, under oath, and deposit in the office of the territorial insurance commissioner, a full, true and complete statement of the condition of such company on the last day of the month preceding that in which such statement is filed, which last statement shall exhibit the following items and facts, in the following forms, viz:

First—The amount of capital stock of the company;

Second—The name of the officers;

Third—The name of the company and where located;

Fourth—The amount of capital stock paid up;

Fifth—The property or assets held by the company, specifying the value as near as may be of the real estate owned by such company, the amount of cash on hand and deposited in banks to the credit of the company, and in what bank the same is deposited; the amount of moneys, stocks or bonds deposited in any foreign country, state or territory of the United States for the special benefit of the assured therein; the amount of cash in the hands of agents and in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate and its assessed valuation; the amount of all other bonds and loans and how secured, with the rate of interest thereon; the amount due the company on which judgment has been obtained; the amount of stocks of this territory, of the United States, of any incorporated city of this territory, and of any other stock owned by the company, specifying the amount, numbers of shares and par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of assessment on stock and premium notes paid and unpaid; the amount of interest actually due and unpaid; all other securities and their value; the amount for which premium notes have been given, on which policies have been issued;

Sixth—The liabilities of such company, specifying the losses adjusted and due, losses adjusted and not due, losses unadjusted, losses in suspense, and the cause thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required to re-insure all outstanding risks on the basis of fifty per cent. of the premium on all unexpired risks under one year, and pro rata on all unexpired risks having more than one year to run; the amount due banks or other cerditors; the amount of money borrowed, and the security therefor; all other claims against the company;

Seventh– The income of the company during the previous year, specifying the amounts received for premiums, exclusive of premium notes; the amount of premium notes received; the amount received for interest; the amount received for assessment calls on stock or notes, or premium notes; the amount received from all other sources;

Eighth– The expenditures during the preceding year, specifying the amount of losses paid during said term; stating how much of the same accrued prior, and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid commissions, salaries, expenses and other charges of agents, clerks and other employes; the amount paid for salaries, fees and other charges of office and directors; the amount paid for local, territorial, national, internal revenue and other taxes and duties; the amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc.;

Ninth—The largest amount insured in any one risk;

Tenth— The amount of risks written during the year then ending;

Eleventh— The amount of risks in force having less than one year to run;

Twelfth—The amount of risks in force having more than one and not over three years to run;

Thirteenth—The amount of risks having more than three years to run;

Fourteenth—The following question must be answered, viz: are dividends declared on premiums received for risks not terminated?

The territorial insurance commissioner shall withhold the certificate of authority from any such company neglecting or failing to comply with the provisions of this section. [S. L. 1877, p. 64, § 20. S. L. 1884, ch. 48, §§ 3 and 6.]

Commissioner may inquire into company's affairs.

SEC. 623. The terrirorial insurance commissioner is hereby authorized and empowered to address any inquiries to any insurance comyany in relation to its doings and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and it shall be the duty of any company so addressed to promptly reply in writing thereto. [S. L. 1877, p. 66, § 21; S. L. 1884, ch. 48, § 3.]

Statement of notes held as assets.

SEC. 624. The statement of any company, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital, and also what proportion of said notes are still held by such company and considered capital. [S. L. 1877, p. 66, § 22.]

Conditions upon which foreign companies may do business.

SEC. 625. It shall not be lawful for any insurance company, association or partnership, organized or associated for any of the purposes specified in this chapter, incorporated by or organized under the laws of any other state or the United States, or any foreign government, directly or indirectly, to take risks or transact any business of insurance in this territory, unless possessed of three hundred thousand dollars of actual paid up capital, exclusive of any assets of any such company as shall be deposited in any other states or territories or foreign countries, for the special benefit or security of the insured therein; and any such company desiring to transact any such business, as aforesaid, by any agent or agents in this territory, shall appoint one attorney in each county in which agencies are established, resident at the county seat, and shall file with the territorial insurance commissioner a written instrument, duly signed and sealed, authorizing such attorney of such company to acknowledge service of process, for and in behalf of such company in this territory, consenting that such service of process, mesne or final, upon such attorney, shall be taken and held as valid as if served upon the company, to the laws of this territory or any other territory or state, and waiving all claims of right or error by reason of such acknowledgement or service, and also a certified copy of their charter or deed of settlement, together with a statement, under the oath of the president or vice president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts and items as required from companies organized under the laws of the territory, such statement shall also show to the full satisfaction of the territorial insurance commissioner that said company, if organized without the United States of America, has deposited in some one of the United States or territories a sum not less than one hundred thousand dollars for the special benefit or security of the insured therein, and shall file also a copy of the last annual report, if any, made under any law of the state, territory or foreign country by which such company was incorporated, and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities, as stated in section six hundred and twenty-two, to the extent of twenty per cent. thereof while such deficiency shall continue. [S. L. 1877, p. 66, § 23; S. L. 1884, ch. 48, § 3.]

Certificate of authority to do business necessary.

SEC. 626. It shall not be lawful for any agent or agents or individual to act for any insurance company referred to in this chapter, directly or indirectly, in taking risks or transacting business of insurance in this territory, without procuring from the territorial insurance commissioner a certificate of authority that such company has complied with all the requirements of this chapter. [S. L. 1877, p. 67, § 24. S. L. 1884, ch. 48, § 3.]

Annual renewal of statement by foreign companies.

SEC. 627. The statements and evidences of investment required of foreign companies, as above, shall be renewed annually, in such manner and form as required by this chapter, and as said insuranee commissioner may direct, with any additional statement of the amount of the losses incurred on the premiums received in this territory during the preceding period, so long as such agency continues, and the said insurance commissioner, on being satisfied that the capital, securities and investments remain secure, as hereinbefore provided, shall furnish a renewal of his certificate, as aforesaid. [S. L. 1877, p. 67, § 25. S. L. 1884, ch. 48, § 3.]

Matters to be set forth in insurance advertisements.

SEC. 628. Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town or village in which the company is located, and the state or government under the laws of which it is organized, and shall in no case advertise any merely authorized capital, but shall in all such advertisements be limited to actual paid up capital and cash assets, liable for fire losses only. The term agent or agents used in the foregoing section shall include an acknowledged agent or surveyor, or any other person or persons who shall in any manner, directly or indirectly, transact or aid in transacting the insurance business of any insurance company not incorporated by the laws of this territory. The provisions of the foregoing sections relative to foreign companies shall apply to all such companies, partnerships, associations or individuals, whether incorporated or not; *Provided*, That none of the provisions of this clause shall be deemed operative in regard to insurance upon goods or merchandise in transit. [S. L. 1877, p. 67, § 26.]

Duties of existing companies.

SEC. 629. Every insurance company organized under the laws of, or doing business in this territory, shall conform to all the provisions of this chapter applicable thereto, on or before the first day of April, eighteen hundred and seventy-eight, and when necessary, any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors, and any president, secretary or other officer of any company organized under the laws of Wyoming, or any officer or person doing or attempting to do business in this territory for any insurance company, organized without this territory, failing to comply with any of the requirements of this chapter, or violating any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period of not less than thirty days, nor more than six months. [S. L. 1877, p. 68, § 27.]

Examination of condition of companies—Duty when capital impaired.

SEC. 630. It shall be the duty of the territorial insurance commissioner, whenever he shall deem it expedient so to do, in his judgment, to appoint one or more persons, not officers, agents or stockholders of any insurance company doing business in this territory, to examine into the affairs and condition of any insurance company incorporated or doing business in this territory, or to make such examination himself, and it shall be the duty of the officers or agents of such company or companies to cause their books to be opened for the inspection of the insurance commissioner or the person or persons so appointed, and otherwise facilitate such examination so far as may be in their power so to do, and for the purpose of arriving at the truth in such cases, the insurance commissioner or the person or persons so appointed by him, shall have power to examine, under oath, the officers or agents of any company or others, if necessary, relative to the business and condition of said company; and whenever the insurance commissioner shall deem it best for the interests of the public so to do, he shall publish the result of such investigation in one or more papers of this territory, and whenever it shall appear to the said insurance commissioner, from such examination, that the assets and funds of any company incorporated in this territory are reduced or impaired by the liabilities of said company, as described under the head of liabilities in the statement required by this chapter, more than twenty per cent. below the paid up capital stock required by this chapter, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the territorial attorney, whose duty it shall become to apply to the district court, or if in vacation, to one of the judges thereof for an order requiring said company to show cause why their business should not cease, and the court or judges, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court or judge that the assets and funds of said company are not sufficient as aforesaid, or that the interest of the public require it, the said court or judge shall decree a dissolution of said company and a distribution of its effects; the said court or judge shall have power to refer the application of the territorial attorney to a referee, to inquire into and report upon the facts stated therein. [S. L. 1877, p. 68, § 28. S. L. 1884, ch. 48, § 3.]

Stockholders to make deficiency good—Liability of directors.

SEC. 631. Any company receiving the aforesaid requisition from the said insurance commissioner, shall forthwith call upon its stockholders for such amounts as will make its paid up capital equal to the amount required by this chapter, or the charter of said company, and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as said insurance commissioner shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholders may be entitled to, in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company; the value of such shares for which new certificates shall be issued to be ascertained under the direction of the said insurance commissioner, the company paying for the fractional part of shares, and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor to an amount sufficient to make up the original capital of the company; and in event of any additional losses accruing upon new risks taken upon the expiration of the period limited by the said insurance commissioner in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. [S. L. 1877, p. 69, § 29. S. L. 1884, ch. 48, § 3.]

Duty of commissioner when assets insufficient.

SEC. 632. If upon the examination it shall appear to the said insurance commissioner that the assets of any company, chartered upon the plan of mutual insurance under this chapter, are insufficient to justify the continuance of such company in business, it shall be his duty to proceed in relation to such company in the same manner as is herein required in regard to joint stock companies, and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the time limited by the said insurance commissioner for filling up the deficiency in the capital, and before such deficiency shall be made up; any transfer of the stock of any company organized under this chapter made during the pending of any investigation required above, shall not release the party making the transfer from his liability for losses which may have accrued previous to such transfer. [S. L. 1877, p. 70, § 30. S. L. 1884, ch. 48, § 3.]

Commissioner may revoke certificate.

SEC. 633. The territorial insurance commissioner shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this territory, not organized under the laws of this territory, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance company, and whenever it shall appear to the satisfaction of said insurance commissioner that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company, and shall cause the notification thereof to be published in some newspaper in general circulation, published at the territorial capital, and the agent or agents of such company are, after such notice, required to discontinue the issuing of any new policy or the renewal of any previously issued. [S. L. 1877, p. 70, § 31. S. L. 1884, ch. 48, § 3:]

Compensation of commissioner.

SEC. 634. There shall be paid by every company, association, person or persons, agent or agents, to whom this chapter shall apply, the following fees: for filing and examination of the first application of any company and issuing the certificate of license thereon, twenty-five dollars, which shall go to the insurance commissioner; for filing each annual statement herein required, fifteen dollars; for each certificate of authority, one dollar; for every copy of paper filed, as herein provided, the sum of ten cents per folio, and fifty cents for certifying the same and affixing the seal of office thereto; all of which fees shall be paid to the officer required to perform the duties. [S. L. 1877, p. 71, § 32. S. L. 1884, ch. 48, §§ 3 and 4.]

Foreign companies—Inter-state comity.

SEC. 635. Whenever the existing or future laws of any other state or territory of the United States shall require of insurance companies incorporated by or organized under the laws of this territory, having agencies in such other state or territory, or of the agents thereof, any deposit of securities in such state or territory for the protection of policy-holders, or otherwise, in any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes from similar companies of other states or territories by the then existing laws of this territory, then, and in every such case, all companies of such states or territories establishing or having theretofore established an agency or agencies in this territory, shall be and are hereby required to make the same deposit for a like purpose with the insurance commissioner of this territory, and to pay said insurance commissioner for taxes, fines, penalties, certificates of authority, license, fees, or otherwise, an amount equal to the amount of such charges and payments imposed upon or required by the laws of such state or territory of the companies of this territory, or the agents thereof. [S. L. 1877, p. 71, § 33. S. L. 1884, ch. 48, § 3.]

Publication of commissioner's certificate.

SEC. 636. It shall be the duty of every insurance company of the kind provided in this chapter, doing business in this territory, organized under the laws of this territory, or any other state, territory or country, to publish once annually in two newspapers of general circulation, one of which newspapers shall be published at the capital of the territory, (and in case of companies organized in the territory, one of which shall be published in the county where the principal office is located), a certificate from a territorial insurance commissioner that said company has in all respects complied with the laws of this territory relating to insurance. [S. L. 1877, p. 71, § 34. S. L. 1884, ch. 48, § 3.]

Companies to pay expense of examination--Control of delinquent companies.

SEC. 637. The necessary expenditure for any examination made or ordered to be made by the insurance commissioner of this territory, under this chapter, shall be certified by him and paid on his requisition by the company which is the subject of such examination; *Provided*, That the territorial insurance commissioner shall have the power, upon receiving information that the capital of any company is impaired, to call upon any such company for a full statement of its condition, and in event of refusal or neglect of any company to answer the requisition of the insurance commissioner, as aforesaid, he shall proceed to make the examination required by this chapter, and to take the necessary action to terminate the business of said company in this territory. [S. L. 1877, p. 72, § 35. S. L. 1884, ch. 48, § 3.]

Commissioner to furnish printed forms for statement.

SEC. 638. It shall be the duty of the territorial insurance commissioner to cause to be prepared and furnished to each of the companies organized under the laws of this territory, and to attorneys or agents of companies incorporated by other states or territories and foreign governments, who may apply for the same, printed forms of statements required by this chapter, and he may, from time to time, make such changes in the form of these statements as shall seem to him the best adapted to elicit from the companies a true exhibit of their condition in respect to the several points herein enumerated. [S. L. 1877, p. 72, § 36. S. L. 1884, ch. 48, § 3.]

Companies restricted to authorized business.

SEC. 639. It shall not be lawful for any company organized upon the mutual plan to do business and take risks upon the stock plan; neither for a company organized as a stock company to do business upon the plan of a mutual insurance company. [S. L. 1877, p. 73, § 38.]

Mutual associations.

SEC. 640. Nothing in this chapter shall be so construed as to prevent any number of persons, not exceeding two hundred, from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire or death, but such asociation of persons shall in no case insure any property not owned and occupied by one of their number, and no life, except that of one of their own number; nor shall the provisions of this chapter be applicable to such associations or companies; *Provided*, Such associations or companies shall in no case pay any salaries or compensations to officers, agents or any other employes, and shall receive no premiums nor make any dividends. [S. L. 1877, p. 73, § 39.]

General laws not to apply to insurance companies.

SEC. 641. The general corporation laws of this territory shall have no application to insurance companies. [S. L. 1877, p. 73, § 40. S. L. 1886, ch. 76, § 2.]

Construction of "capital stock"—Secret societies excepted.

SEC. 642. In their application to any life insurance company incorporated by, or organized under, the laws of any other territory, state or foreign government, the words "capital," "paid up capital," and "capital stock," where the same occur in this chapter, shall be construed to mean "surplus assets;" but the provisions of this chapter shall not be construed to affect or apply to any masonic, odd fellows, knights of pythias, ancient order of united workmen, or other secret benevolent society which has an insurance system connected therewith. [S. L. 1886, ch. 76, § 3.]

CHAPTER 9.

CONFIRMATION OF CERTAIN CORPORATE ACTS.

SECTION.
643. Certain corporate meetings legalized—Stockholders' meetings to be held within the territory.

Certain corporate meetings legalized—Stockholders' meetings to be held within the territory.

SEC. 643. The corporate acts and proceedings of the Napa consolidated quicksilver mining company, and of the Kansas mining company, and of the Ætna quicksilver mining company, each being corporations organized under the laws of the Territory of Wyoming, especially so far as the same may appear defective in consequence of failure to legally notify the stockholders of each of the said corporations of the time and place of holding the annual meetings of the stockholders of the said corporations, and also in consequence of the failure of the said corporations to hold the annual meetings of the stockholders of said corporations within the Territory of Wyoming, and all acts and doings dependent thereon, are hereby ratified and confirmed; and the said Napa consolidated quicksilver mining company, and the Kansas mining company, and the Ætna quicksilver mining company are, and each of them is, hereby established as an existing corporation, with all the rights and privileges, and subject to all the duties and liabilities and restrictions contained in any general law of this territory applicable to such corporations; *Provided*, That nothing in this chapter shall be construed as a privilege to the corporations herein mentioned, or to either of them, or to any other corporation or corporations created and acting under the laws of this territory, to hold the meeting of the stockholders of such corporation or corporations outside of the Territory of Wyoming, but all such meetings shall be held within the Territory of Wyoming. [S. L. 1884, ch. 21, § 1.]

CHAPTER 10.

AGRICULTURAL AND STOCK ASSOCIATIONS.

SECTION.
644. Corporate powers—Exempt from taxation.
645. Membership—By-laws.

SECTION.
646. Control of exhibition grounds.

Corporate powers—Exempt from taxation.

SEC. 644. In all cases when the citizens of any county, or of two counties jointly, shall, or may have organized a county stock and agricultural society, not exceeding one in each county, by the adoption of a constitution and the choice of officers, they shall have all the powers of a corporation and body politic, and may sue and be sued, plead and be impleaded, prosecute and defend to final judgment and execution in any court of law or equity, and may purchase and hold any real or personal estate which shall be necessary to best promote the objects of said association, and which estate shall be exclusively devoted to such objects. Said societies shall also have power to sell and convey any and all such real estate, said conveyance being executed by the president and secretary of such society. All such land and property shall be exempt and free from taxation, while used as aforesaid by such societies. [C. L. 1876, ch. 29, § 1.]

Membership—By-laws.

SEC. 645. All such societies shall be open and free alike to all the citizens of a county who may wish to become members thereof, and shall comply with the regulations and pay the prescribed fees. They shall hold annual meetings for the election of their officers. They may adopt such by-laws as may be required to carry out the purposes of the society, and may adopt a corporate seal, and change the same at pleasure. Their records shall be carefully kept by their secretary, and may be read in evidence in any court when the interests of such society are concerned. [C. L. 1876, ch. 29, § 2.]

Control of exhibition grounds.

SEC. 646. The principal officers of such societies shall have full jurisdiction and control of the grounds on which the society may exhibit, and all the streets and alleys and other grounds adjacent to the same, during all such exhibitions, so far as may be necessary to preserve and keep good order, and to exclude therefrom all other exhibitions, booths, stands, or other temporary places for the retail or sale of any kind of spirituous or fermented liquors, or other articles that they might deem objectionable or offensive to said exhibition. The president of any such society shall have the power to appoint any necessary policemen to assist in preserving the peace or arresting offenders' and all such policemen thus appointed shall be vested, during the continuance of such exhibition, with the ordinary powers and authority of constables, and be entitled to similar fees for any services rendered or duty performed. Any person who wilfully and without leave, enters any fair ground during an exhibition, or by fraudulently receiving and using the tickets or badge of another without the proper payment and compliance with the rules of said grounds, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court, shall be liable to a fine of not less than five nor more than twenty-five dollars, and in case of non-payment, to imprisonment in the county jail not less than one nor more than ten days. Any such offender may be tried before any justice of the peace, or police justice, most convenient in the county. [C. L. 1876, ch. 29, § 3.]

CHAPTER 11.

DISSOLUTION.

SECTION.
647. Duties and powers of trustees on dissolution.
648. Title to property to vest in trustees.
649. Dissolution shall not abate actions.
650. Action may be proceeded in corporate name after dissolution.
651. Certain liens not affected by dissolution.

SECTION.
652. How judgments against dissolved corporations satisfied.
653. Chancery jurisdiction on dissolution.
654. Procedure on dissolution by stockholders.
655. Notice of expiration by limitation.
656. Notice of dissolution of foreign corporations.

Duties and powers of trustees on dissolution.

SEC. 647. Upon dissolution by expiration of its charter or otherwise, of any corporation now existing, or which hereafter may be formed, unless some other person or persons be appointed by the legislature or some court of competent jurisdiction, the board of trustees or directors of such corporation, or the managers of the corporate affairs, by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, to sue for and collect the debts and moneys due the corporation, or to compound and settle the same as they may deem best; to have, hold, reserve, sell and dispose of property, real and personal, of every such corporation dissolved, to adjust and pay all the debts of the corporation dissolved, to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount of stock of each stockholder paid up; all such trustees shall be jointly and severally liable to the creditors and stockholders of such corporation dissolved, to the extent of the property and effects which shall come into their hands and possession, or into the hands or possession of any of them. [C. L. 1876, ch. 34, p. 246, § 1.]

Title to property to vest in trustees.

SEC. 648. The title to all real and personal estate belonging to any such corporation, shall, immediately upon the dissolution thereof, unless by a decree of a court of competent jurisdiction, declaring such dissolution, it is otherwise ordered, pass to and rest in such trustees, directors or other managers, and an action at law may be maintained by such trustees or directors, or the survivors of them, in their own names, by the style of the trustees of such corporation dissolved, naming it, for the recovery of all such property, or of any damage done to the same, or for the recovery of any debts due to such corporation dissolved. [C. L. 1876, ch. 34, p. 246, § 2.]

Dissolution shall not abate actions.

SEC. 649. No suit or action at law or in chancery whereto any corporation is or may be a party, shall abate by reason of the dissolution of such corporation by expiration of its charter of incorporation or otherwise; but the trustees or directors of such corporation, acting as trustees to the stockholders and creditors after the dissolution as herein provided, or the survivors of them, or the trustee or trustees, receiver or receivers, appointed by the decree of any court of competent jurisdiction, may prosecute or defend such suit or action in the name of the corporation dissolved, notwithstanding the dissolution. [C. L. 1876, ch. 34, p. 246, § 3.]

Action may be prosecuted in corporate name after dissolution.

SEC. 650. Any corporation dissolved may, notwithstanding such dissolution, prosecute an action at law in the corporate name, for the use of the person entitled to receive the proceeds of such suit, upon any cause of action accrued, or which, but for such dissolution, would have accrued to such corporation and in the same manner, and with like effect as if such corporation were not dissolved. [C. L. 1876, ch. 34, p. 246, § 4.]

Certain liens not affected by dissolution.

SEC. 651. The lien of a judgment or execution at law, or a decree of a court of equity, in favor of or against any corporation, shall not be dissolved or suspended by reason of the dissolution of such corporation, subsequent to the rendition of such judgment or the entry of such decree, or the issuing of such execution, but execution may be had thereof in the same manner as if such dissolution had not occurred. [C. L. 1876, ch. 34, p. 247, § 5.]

How judgments against dissolved corporations satisfied.

SEC. 652. No execution shall issue upon judgments at law, rendered against any corporation, subsequent to the dissolution of such corporation, but the same, with the costs thereof, shall be paid by the trustees as other debts. [C. L. 1876, ch. 34, p. 247, § 6.]

Chancery jurisdiction on dissolution.

SEC. 653. Nothing in this chapter contained shall be construed to impair the jurisdiction of the court of chancery, to decree the dissolution of any corporation, or to appoint a receiver or receivers, trustee or trustees, to settle the affairs of any corporations dissolved by lapse of time or otherwise, and all trustees or managers of any corporation, acting as the trustees of the stockholders and creditors thereof, after the dissolution of the corporation, shall in all things be subject to the control of the court of chancery; may be required to give bond, with security to be approved by the court, upon petition of any stockholder or creditor of the corporation dissolved, conditioned for the due discharge of their trust; may be required to account for the proceeds of the property and effects of the corporation, and for any failure to give such bond or render such account, or for any default or neglect of duty, they, or any of them, may be removed by the court, and a successor or successors appointed. [C. L. 1876, ch. 34, p. 247, § 7.]

Procedure on dissolution by stockholders.

SEC. 654. Whenever the stockholders of any corporation formed under the laws of Wyoming Territory desire to dissolve the corporation, prior to the time limited by law, or by the terms of its articles of incorporation, they may do so upon the vote of two-thirds of the entire stock of the corporation, at a meeting of the stockholders of said corporation which shall have been called for the stated purpose of considering a proposition to dissolve such corporation, and not until its debts shall have been fully paid, notice of such meeting to be given in the manner now or at the time provided by law for calling stockholders' meetings for the purpose of increasing or diminishing the capital stock of corporations, and when a dissolution has been so ordered, the president and secretary of such corporation shall make and sign notices of dissolution, one copy of which shall be filed in the office of the secretary of the territory, and one copy shall also be filed in the office of the county clerk in every county in which the articles of incorporation of such corporation were filed, and a copy of such notice shall be published in some newspaper printed in each of said counties for the period of at least six weeks, and upon the filing and publication of such notices as aforesaid, such corporation shall be deemed to have been dissolved forever. [S. L. 1884, ch. 27, § 1.]

Notice of expiration of limitation.

SEC. 655. Whenever any corporation formed under the laws of Wyoming Territory shall expire by limitation of law, or by the terms of its articles of incorporation, notices of such expiration shall be made and filed and publication made in the same manner as is hereinbefore required. [S. L. 1884, ch.27, § 2.]

Notice of dissolution of foreign corporations.

SEC. 656. Whenever any foreign corporation, which is doing business according to law in this territory, shall expire by limitation or otherwise, it shall be the duty of the agent or representative of such corporation to file and publish notices of such expiration, in the same manner as is hereinbefore provided. [S. L. 1884, ch. 27, § 3.]

TITLE 8. COUNTIES.

Chapter 1. Boundaries and county seats.
Chapter 2. Proceedings when boundary lines are in dispute.
Chapter 3. Apportionment of county indebtedness on the formation of new counties.
Chapter 4. County libraries.
Chapter 5. Construction of artesian wells in the several counties.
Chapter 6. Carbon County court house bonds.
Chapter 7. Fremont County court house bonds.
Chapter 8. Crook County court house bonds.
Chapter 9. Special tax legislation for Sweetwater County.
Chapter 10. Johnson County court house bonds.
Chapter 11. Uinta County jail bonds.
Chapter 12. Uinta County funding bonds.
Chapter 13. Uinta County hospital.

CHAPTER 1.

BOUNDARIES AND COUNTY SEATS.

SECTION.
657. Boundaries of Albany County.
658. County seat of Albany County.
659. Boundaries of Carbon County.
660. County seat of Carbon County.
661. Boundaries of Crook County.
662. County seat of Crook County.
663. Boundaries and county seat of Fremont County.

SECTION.
664. Boundaries of Johnson County.
665. Boundaries of Laramie County.
666. County seat of Laramie County.
667. Boundaries of Sweetwater County.
668. County seat of Sweetwater County.
669. Boundaries of Uinta County.

Boundaries of Albany County.

Sec. 657. All that portion of the territory embraced within the following described boundaries shall be known as Albany County: Commencing at Buford station on the Union Pacific railroad, thence due north to the parallel of forty-three degrees and thirty minutes north, then west along said parallel to the eastern line of Carbon County, thence south along said eastern boundary line of Carbon County to the point of intersection with the fourth standard parallel north, being the line between townships sixteen and seventeen north, thence west along said fourth standard parallel north, being the line between said townships sixteen and seventeen north to the point of intersection with the range line between ranges seventy-nine and eighty west of the sixth principal meridian, thence south along said range line and its offsets between ranges seventy-nine and eighty west to the point of intersection with the boundary line between this territory and the State of Colorado, thence east on the boundary line between this territory and the State of Colorado to a point due south of Buford station and thence north to the point of beginning. [C. L. 1876, ch. 27, p. 198, § 1. S. L. 1886, ch. 5, § 1.]

County seat of Albany County.

Sec. 658. The county seat of said county is hereby located at the City of Laramie, until removed therefrom according to law. [C. L. 1876, ch. 27, p. 198, § 3.]

Boundaries of Carbon County.

Sec. 659. All that portion of the territory described as follows is hereby organized into a county by the name of Carbon, to wit: Commencing at a point one-half mile east of Como station, on the Union Pacific railroad, and running thence due north to the parallel of forty-three degrees and thirty minutes north latitude, thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude, thence south along the one hundredth and seventh degree and thirty minutes west longitude to the point of intersection with the line between townships nineteen and twenty north, thence west along said line between said townships nineteen and twenty north to the point of intersection with the range line between ranges ninety-three and ninety-four west of the sixth principal meridian, thence south along said range line and its offsets between ranges ninety-three and ninety-four west to the point of intersection with the boundary line between this territory and the State of Colorado, and thence east on the boundary line between this territory and the State of Colorado to the point of intersection with the range line between ranges seventy-nine and eighty west of the sixth principal meridian, thence north along said range line and its offsets between ranges seventy-nine and eighty west to the point of intersection with the fourth standard parallel north being the line between townships sixteen and seventeen north, thence east along said fourth standard parallel north, being the line between said townships sixteen and seventeen north, to a point due south of the point of beginning and thence north to the place of beginning, [C. L. 1876, ch. 27, p. 197, § 1; p. 199, § 2. S. L. 1877, p. 19, § 1. S. L. 1886, ch. 5, §§ 1 and 5.]

County seat of Carbon County.

SEC. 660. The county seat of said county is hereby located at Rawlins, until removed therefrom according to law. [C. L. 1876, ch. 27, p. 197, § 3.]

Boundaries of Crook County.

SEC. 661. All that portion of the territory bounded and described as follows, shall be erected into a county to be known by the name of Crook: Commencing at the northeast corner of this territory, thence south along the boundary line between this territory and the Territory of Dakota, to the forty-third degree and thirty minutes north latitude, thence west along said latitude to the one hundred and sixth meridian of longitude west from Greenwich, thence north with said meridian of longitude to the southern boundary of the Territory of Montana, thence east along said boundary to the place of beginning; *Provided*, That if, by reason of any treaty with the Sioux tribe of Indians and any act of congress, any part of the Territory of Dakota shall be included within the limits of this territory, the same shall form and constitute part of the aforesaid county. [C. L. 1876, ch. 27, p. 198, § 1.]

County seat of Crook County.

SEC. 662. The county seat of Crook County shall be located by the county commissioners of said county. [S. L. 1877, p. 34, § 5.]

Boundaries and county seat of Fremont County.

SEC. 663. All that portion of the territory bounded and described as follows, shall be created a county to be known by the name of Fremont with county seat at Lander; commencing at a point where the northern boundary line of this territory intersects the thirty-third meridian of longitude and running thence south along said meridian to the boundary line between townships twenty-six and twenty-seven north; thence east on said township line to a point one hundred and seven degrees and thirty minutes west from Greenwich, being the western boundary of Carbon County; thence north along said line of one hundred and seven degrees and thirty minutes of longitude to its intersection with the line of forty-three degrees and thirty minutes of north latitude, being the southern boundary of Johnson County; thence west along said line of forty-three degrees and thirty minutes north latitude to the Big Horn river, thence down said Big Horn river to the forty-fifth parallel of north latitude, being the northern boundary line of this territory, thence west along said forty-fifth parallel of north latitude to the place of beginning; *Provided*, That if by reason of any treaty with the Shoshone or Arapahoe tribe of Indians and any act of congress the Indian or government title to any lands or reservation within the limits of the county shall be extinguished, the same shall form and constitute a part of the aforesaid county. [S. L. 1884, ch. 46, § 1.]

Boundaries of Johnson County.

SEC. 664. All that portion of the territory bounded and described as follows shall be erected into a county to be known by the name of Johnson: Commencing at the northwest corner of Crook County, thence south along the western boundary line of said county to the southwest corner thereof; thence west along the forty-third degree and thirty minutes of north latitude to the Big Horn river; thence down the latter stream to the southern boundary line of the Territory of Montana; thence east along said line to the place of beginning. [C. L. 1876, ch. 27, p. 199, § 2. S. L. 1879, ch. 31, § 1.]

Boundaries of Laramie County.

SEC. 665. All that portion of the territory bounded and described as follows shall constitue the present County of Laramie, to wit: Beginning at the southeast corner of Crook County, and running thence south along the eastern boundary line of the Territory of Wyoming to the southeast corner of said territory; thence west along the southern boundary line of said territory to the southeast corner of Albany County; thence north along the eastern boundary line of Albany County to the southern boundary line of Crook County; and thence east along said southern boundary line of Crook County to the place of beginning. [S. L. 1886, ch. 105, § 1.]

County seat of Laramie County.

SEC. 666. The county seat of said county is hereby located at the City of Cheyenne. [C. L. 1876, ch. 27, p. 196, § 2.]

Boundaries of Sweetwater County.

SEC. 667. All that portion of the Territory of Wyoming bounded and described as follows, is hereby erected into a county by the name of Sweetwater: Commencing at the intersection of the forty-first parallel of latitude and thirty-third meridian of longitude west from Washington, running thence north along said meridian of longitude to the intersection thereof with the boundary line between townships twenty-six and twenty-seven north, thence east on said boundary line between said townships to a point one hundred and seven degrees and thirty minutes west from Greenwich, being the western boundary of Carbon County, thence south along said line of one hundred and seven degrees and thirty minutes of longitude, to its intersection with the line between townships nineteen and twenty north, thence west along said line between said townships nineteen and twenty north, to its intersection with the range line between ranges ninety-three and ninety-four west of the sixth principal meridian, thence south along said range line and its offsets between ranges ninety-three and ninety-four west to its intersection with the line of forty-one degrees of north latitude, being the southern boundary of Wyoming Territory, thence west along said line of forty-one degrees north latitude to the place of beginning. [C. L. 1876, ch. 27, p. 194, § 1. S. L. 1884, ch. 46, § 1. S. L. 1886, ch. 5, § 5.]

County seat of Sweetwater County.

SEC. 668. The county seat of Sweetwater County is hereby located at Green River, in said county. [C. L. 1876, ch. 107, § 1.]

Boundaries of Uinta County.

SEC. 669. All that portion of the Territory of Wyoming, bounded and described as follows, is hereby erected into a county by the name of Uinta: Commencing at the intersection of the forty-first parallel of latitude and the thirty-third meridian of longitude west from Washington, running thence north along said thirty-third meridian of longitude, to its intersection with the forty-fifth parallel of latitude, thence west along said forty-fifth parallel of latitude to its intersection with the thirty-fourth meridian of longitude west from Washington; thence south along said thirty-fourth meridian, to its intersection with the forty-first parallel of latitude; thence east along said parallel to its place of beginning. [C. L. 1876, ch. 27, p. 194, § 1.]

CHAPTER 2.

PROCEEDINGS WHEN BOUNDARY LINES ARE IN DISPUTE.

SECTION.
670. Disputed boundary lines to be surveyed by county surveyors.
671. Reports of surveyors when they agree as to boundaries.
672. Reports of surveyors when they disagree.
673. Application to court for settlement of boundaries—Notice.
674. When court obtains jurisdiction.
675. Manner in which boundaries settled by court—Appeal.
676. Application to court when survey has not been made.
677. Expenses and costs, how paid.

Disputed boundary lines to be surveyed by county surveyors.

SEC. 670. Whenever any dispute shall arise between two adjoining counties in the territory as to the location of the boundary line between said counties, it shall be the duty of the board of county commissioners of each of such counties, by order to be entered of record, to direct and cause the county surveyor of their respective counties to proceed to survey the boundary line concerning which disputes or differences may have arisen; upon the making of such order it shall be the duty of the county surveyors of such counties, in conjunction with each other, to survey said disputed boundary line, and they shall proceed with such survey, at some time to be agreed upon between the county commissioners of such counties; *Provided*, That the provisions of this chapter shall not apply to the county line between Crook and Johnson counties, until the county surveyor of Johnson County shall have made a survey of said line, when, if the survey made by Crook County and the survey made by Johnson County shall not be made to agree, it will be settled in the same manner as other disputed boundary lines provided by this chapter. [S. L. 1886, ch. 87, § 1.]

Reports of surveyors when they agree as to boundaries.

SEC. 671. The said county surveyors of such counties, if they agree in such survey, or in so far as they do agree, shall mark the line as located by them, by placing or erecting at the end of each mile of the line or lines so agreed upon, a stone or wooden monument, of sufficient dimensions and durability to render it readily discernable, upon which monument shall be plainly marked or designated the point which it represents or locates. Upon the completion of such survey by said county surveyors, they shall make a joint report in duplicate of the line agreed upon by them, and their survey, to which report shall be attached maps showing the location of said line, and of all monuments, stones or stakes placed or erected by them along said line, which said report shall besigned by such surveyors, and sworn to by them respectively, one of which said reports shall be filed with the county clerk of each of said counties. In so far as said surveyors have agreed by their survey, the line shall be deemed to be finally located, as shown by said reports, and the same shall be conclusive upon said counties. [S. L. 1886, ch. 87, § 2.]

Reports of surveyors when they disagree.

SEC. 672. In case said county surveyors shall not agree in their survey as to the location of such line, or any portion of the same, they shall make separate reports of the line or such parts of the line as to which their surveys do not agree, such separate reports to have maps attached, as provided in the last preceding section, which said last mentioned report shall be made in duplicate, one to be filed with the county clerk of each of such counties. [S. L. 1886, ch. 87, § 3.]

Application to court for settlement of boundaries—Notice.

SEC. 673. After the coming in and filing of such separate reports, show- the failure of such county surveyors to agree upon such boundary line, or any portion thereof, the county commissioners of either of such counties desiring to have such boundary line definitely settled, may apply to the district court sitting within and for their county, setting forth in such application the proceedings had up to the time thereof, under the provisions of this chapter, and attaching to such application a copy of all the records and reports concerning such matter in the office of the county clerk of such county, which copy shall be certified to by the county clerk. Such application shall be entitled "In the matter of disputed boundary lines between ———— and ———— counties," and upon receiving such application the same shall be filed by the clerk of said court, and the said cause docketed as other cases. Upon the filing of said application and the docketing of said cause by the clerk of said court, he shall at once cause a notice of the filing of the same, together with a copy of such application, to be mailed to the county clerk of the other interested county, which shall be deemed a sufficient notice to the county commissioners of such other county of the pendency of said matter; *Provided*, That said notice and copy of application shall be sent by registered mail. [S. L. 1886, ch. 87, § 4.]

When court obtains jurisdiction.

SEC. 674. Upon the filing of such application and docketing of said cause, and mailing the notice as aforesaid, said district court shall be deemed to have acquired jurisdiction of such subject matter, which shall exclude the jurisdiction of any other court upon that matter while said cause is pending therein. [S. L. 1886, ch. 87, § 5.]

Manner in which boundaries settled by court—Appeal.

SEC. 675. Said cause so docketed shall stand for hearing at the first day of the term of said court which convenes not less than thirty days next succeeding the filing of said application and the docketing of said cause, from which time the hearing of said application may be adjourned from time to time, upon the application of either interested county, in the discretion of the court. Upon the hearing of said matter the court shall have power and authority, and it shall be its duty if it finds that all proceedings up to that time have been regular and in pursuance to this chapter, to appoint some competent surveyor, resident within the territory, and not resident within either of the interested counties, to make a survey of such disputed boundary line, or such part thereof as to which the surveys theretofore made by the county surveyor shall not have agreed, and shall specify in the order of appointment the time within which such survey shall be made. The surveyor so appointed by said court shall take and subscribe an oath to faithfully and impartially make a survey of such disputed line or lines, as the same may be defined by law, and within the time limited in the order of his appointment shall make such survey, and after making the same shall cause a report thereof to be made in triplicate, with proper and correct maps of such survey attached, which reports shall each be signed by and verified by the affidavit of such surveyor, one of which said triplicate reports shall be filed in said court, and one with the county clerk of each of said counties interested, and the boundary line, or that part of the same which had theretofore been disputed shall, upon the filing of said report with said court, become fixed and located as designated by said report. Said surveyor so appointed by said court shall mark the line surveyed by him in the same manner as prescribed by section six hundred and seventy-one; *Provided*, That said survey and report may be set aside by said court for insufficiency or indefiniteness, upon the application of either county interested, which application to set aside said report shall be made within sixty days of the filing of the same with said court; and any order of said court concerning the matter provided for in this chapter, may be appealed to the supreme court of the territory, in the same manner as other law actions before said court; but until set aside, the boundary line located as shown by said report shall be conclusive. In case said report or any subsequent report be set aside by said court, another competent surveyor may be appointed to make such survey, such new appointee to be governed in all respects according to the provisions of this section; and in case any surveyor appointed shall neglect or refuse to make such survey, another surveyor may be appointed with like authority and duties. [S. L. 1886, ch. 87, § 6.]

Application to court when survey has not been made.

SEC. 676. In case of the refusal of the county commissioners of either of such counties to cause a survey to be made by their county surveyor, in pursuance of the provisions of this chapter, upon request of the commissioners of the other interested county, or the surveyor of such county shall refuse to make such survey in conjunction with the surveyor of the other county, or if the county commissioners of the respective counties cannot agree upon a time for such survey to be made, then in either or all of said cases the county commissioners of the county desiring said boundary line to be definitely settled, may apply to the district court sitting within and for their county, in the same manner as is provided in section six hundred and seventy-three, which application shall set forth the fact of a dispute having arisen in reference to said boundary line, and that the same has not been surveyed by the respective county surveyors in conjunction with each other, and the causes therefor; and said application shall be filed, and the cause docketed and entitled, and all proceedings shall be had thereon, including the appointment by said court of a surveyor, with the same qualifications as surveyors appointed by the court in other cases hereinbefore provided for, as in the other cases of application for the settlement of boundary lines hereinbefore provided for; and upon assuming jurisdiction in such cases, said court shall be deemed to have jurisdiction of such matters, exclusive of other district courts in the territory. [S. L. 1886, ch. 87, § 7.]

Expenses and costs, how paid.

SEC. 677. The expenses of the making of the surveys provided for in this chapter shall in all cases be borne equally by the counties interested, and the costs of any court proceedings had under this chapter shall be paid equally by said counties. [S. L. 1886, ch. 87, § 8.]

CHAPTER 3.

APPORTIONMENT OF COUNTY INDEBTEDNESS ON THE FORMATION OF NEW COUNTIES.

SECTION.

678. Indebtedness to be apportioned on division of county.
679. Method of ascertaining indebtedness—Rule of apportionment.
680. Commissioners to report indebtedness, etc., to district court.
681. Notice of hearing on report.
682. Apportionment by court—Order for payment by new county.
683. New county to issue warrants in payment—Tax levy.

Indebtedness to be apportioned on division of county.

SEC. 678. Any county or counties which may be formed out of territory taken or detached from any other county or counties, duly organized in the Territory of Wyoming, and while said county or counties so formed, as aforesaid, shall be hereafter duly and lawfully organized, said county or counties, so formed as aforesaid, and organized, shall be held liable for the payment of a just and equitable proportion of the indebtedness of said county or counties, from which said newly organized county was formed, existing at the time of the organization of said newly organized county or counties. [S. L. 1877, p. 51, § 1.]

Method of ascertaining indebtedness—Rule of apportionment.

SEC. 679. When any new county shall hereafter be established the county commissioners of any and all of the counties out of whose territory such new county may have been formed shall ascertain from the records of any and all of such counties the amount of the then existing indebtedness of any such county and said commissioners shall also ascertain the assessed value of the real and personal property of the detached territory which shall be taken from the last annual assessment made before the establishment of the new county; said commissioners shall also ascertain from said assessment the total assessed value of the real and personal property of the original county; from which the proportion of said indebtedness which said new county shall bear, shall be determined, which said portion shall bear the same ratio to the whole amount of such county's indebtedness, as the assessed value of the real and personal property of such detached territory bears to the assessed value of the real and personal property of the whole original county, said assessed values to be ascertained as hereinbefore stated from the last annual assessment made before the establishment of the new county; *Provided*, For any indebtedness of the original county, created or incurred for the purpose of aiding in the construction of a railroad, the new county shall only be required to pay a proportionate amount of such indebtedness, which amount shall be in the same ratio to the total amount of said indebtedness as the number of miles of such railroad in such new county is to the total number of miles of such railroad in the original county before its division. [S. L. 1882, ch. 32, § 1. S. L. 1886, ch. 36, §1.]

Commissioners to report indebtedness, etc., to district court.

SEC. 680. The said commissioners shall immediately report to the district court of the district within which such new county shall be located, and to said district court sitting within and for said new county, if the same shall have been organized, and if not, then to the court in said district in some county adjoining the said new county, the amount of the indebtedness of each county out of whose territory said new county is formed, the time when the same becomes due, the nature thereof, and the rate of interest thereon, together with the assessed values of the real and personal property of the detached territory and original counties mentioned in the last preceding section, also the kind, nature and value and location of all public property of said original county and all moneys and credits of said county, which said report shall be verified by the affidavit of the chairman of the respective board of county commissioners, and said report shall be accompanied with proof of the organization of such new county and a statement showing its boundaries. [S. L. 1882, ch. 32, § 2.]

Notice of hearing on report.

SEC. 681. The court to which said report shall be made in pursuance of the provisions of this chapter, or the judge thereof in vacation shall at once cause a notice of the making of said report, to be issued and served upon the chairman of the board of county commissioners of said new county which said notice shall also specify the time and place when and where said report will be heard and considered by said court, and all counties interested shall have an opportunity to be heard in reference thereto, and the time for hearing thereof may be adjourned from time to time in the discretion of the court or judge in vacation, and said report may be heard and considered and all proper orders made concerning the same in vacation by the judge of the court. [S. L. 1882, ch. 32, § 3.]

Apportionment by court—Order for payment by new county.

SEC. 682. It shall be the duty of said court to which said report is made or the judge thereof in vacation to determine upon the basis hereinbefore stated, the proportion of the existing indebtedness which such new county shall bear after deducting its proportion in the same ratio of the value of all public property, moneys and credits of the original county; provided the court may if any of said public property is located, within the limits of any such new county, apportion the same thereto the value of which on the said settlement shall be charged to said new county, and shall order the board of county commissioners of said new county to issue the warrants of said county payable to the order of the original county and payable at a time not later than the time when the aforesaid indebtedness shall become due, and bearing the same rate of interest, to pay the amount of its proportion so as aforesaid determined, and until the said proportion and the warrants issued therefor shall be paid the said indebtedness of the original county shall continue to be a lien upon the taxable property of said new county as before the organization thereof. [S. L. 1882, ch. 32, § 4.]

New county to issue warrants in payment—Tax levy.

SEC. 683. Upon receiving the order of the court provided for in the last preceding section, the said board of county commissioners of the new county shall at once issue the warrants of said county as in and by the said order directed and cause the same to be delivered to the commissioners of the proper county, and said board of county commissioners of said new county shall in each year when any of said warrants become due levy a sufficient tax upon all the real and personal property of said county to pay the same. [S. L. 1882, ch. 32, § 5.]

CHAPTER 4.

COUNTY LIBRARIES.

SECTION.
684. When library tax to be levied—Amount.
685. How tax levied and collected.
686. Trustees, appointment and bonds—Purchase of books.

SECTION.
687. Donations—Location of library—Librarian.
688. Libraries to be free.
689. Trustees to account and report to commissioners—Restrictions upon the use of books.

When library tax to be levied—Amount.

SEC. 684. When the county commissioners of any county have received proper and sufficient guarantees, whether in the form of conveyances, or bonds of citizens, or associations or corporations, that a suitable place will be permanently furnished for the protection and use of a public library, as a condition precedent to their own action, under the provisions of this section, it shall be their duty to levy annually a tax of not less than one-eighth of a mill nor more than one-half of a mill on the dollar on all taxable property in the county, for the establishment and maintenance of a public library, to be located at the county seat of such county. [S. L. 1886, ch. 10, § 1.]

How tax levied and collected.

SEC. 685. The tax authorized by the preceding section shall be levied and collected at the same time and in the same manner as other county taxes of such county are levied and collected, and the whole amount so collected shall be set apart and shall be designated the county library fund; *Provided*, That nothing herein contained shall be construed into authorizing any additional levy to that now authorized by law. [S. L. 1886, ch. 10, § 2.]

Trustees, appointment and bonds—Purchase of books.

SEC. 686. The control and use of said library fund shall be entrusted by the county commissioners of any county to three competent and responsible citizens of the county, to be appointed by said commissioners and to constitute a board of trustees for this purpose. As soon as appointed they shall incorporate as a body, with an appropriate name, they shall serve without compensation, and the treasurer of the board shall give bonds, to be approved by the county commissioners, for the faithful performance of his duties. It shall be their duty, upon notification from the county commissioners that a library fund is at their disposal, to expend so much of the said fund as shall be found available, in the purchase of books for the library herein provided to be established; *Provided*, That the books so purchased shall be of a kind best suited to inform the mind and improve the character of the reader; that neither sectarian nor professional books shall be purchased out of such fund, and that not exceeding twenty-five per centum of such fund so expended shall be used for the purchase of works of fiction. [S. L. 1886, ch. 10, § 3.]

Donations—Location of library—Librarian.

SEC. 687. The said board of trustees is authorized to receive donations of real estate, money or books, in aid of the establishment or maintenance of the library, for which said trustees are hereby made responsible, and, as trustees of the donor, shall carefully observe the conditions accompanying every such gift, and if any incorporated literary or library association shall donate to such county library property equal in value to one thousand dollars, or shall annually contribute to its resources a sum exceeding two hundred and fifty dollars in money, such association shall be entitled to name one person to be an associate member of said board of trustees, who shall have all the rights, privileges and responsibilities of the other members thereof. When no provision can be made for otherwise furnishing the library with the necessary accommodations for its books and other publications, without expense to the library fund arising from the public tax, it shall be the duty of the board of school trustees or directors of the school district embracing the county seat, to provide accommodations for them in the best situated school building over which such board of school trustees have control. The board of trustees shall also appoint a competent person to have the immediate charge of the library, with such duties and compensation for services as they shall fix and determine. [S. L. 1886, ch. 10, § 4.]

Libraries to be free.

SEC. 688. Every library established and maintained under the provisions of this chapter shall be forever free to all residents of the county to which it belongs, on the condition that such persons comply with such rules and regulations for the safety and management of the library as the board of trustees shall prescribe, which rules and regulations may be enforced by legal proceedings in a court of competent jurisdiction; *Provided*, That, in the management of the library, the best possible provision shall be specially made for the convenient use of the books thereof by the residents of such county residing out of the town wherein the library is situated. [S. L. 1886, ch. 10, § 5.]

Trustees to account and report to commissions—Restrictions upon use of books.

SEC. 689. It shall be the further duty of such board of trustees to keep a careful record of all its doings, with duplicate vouchers for all expenditures, one set of such vouchers to be kept in the office of the secretary of the board of trustees, the other to be filed with the county commissioners at the end of each calendar year. The board of trustees shall also, at the end of each year, report to the county commissioners all the important transactions for the previous twelve months, specifying in each report the sum of money received from the county library fund, also the moneys and property received from other sources, the use and disposition made of such moneys and other property, the number of books and other publications then in the library, the number of books and other publications added by purchase and gift during the year, as well as the number of books lost and missing, the number, title and cost of books, maps and charts, purchased out of the county library fund, the number of books loaned out, with the general character of such books, the number of persons who have drawn books from the library during the year and the number of visitors thereto, together with such other facts deemed of public interest, a copy of which report shall be furnished by the clerk of said board of county commissioners for publication in at least one paper of general circulation in the county.

Only persons resident of the county shall be allowed to obtain a loan of books from the library, and in every case when books are lost or destroyed by such parties, or withheld from the library by such persons, then in that event such persons shall be responsible for the loss of such book or books, and the value of said book or books may be recovered by proper action at law in any court of competent jurisdiction in the county. [S. L. 1886, ch. 10, § 6.]

CHAPTER 5.

CONSTRUCTION OF ARTESIAN WELLS IN THE SEVERAL COUNTIES.

SECTION.
690. Commissioners authorized to sink artesian wells.
691. Location of wells.
692. Advertising for proposals.
693. Contractors to give bonds.
694. Pay of contractors.

Commissioners authorized to sink artesian wells.

SEC. 690. The board of county commissioners of the several counties in this territory are hereby authorized and empowered, in their discretion, to appropriate out of the general funds of their respective counties so much money as may be necessary, not exceeding the sum of three thousand five hundred dollars, for the purpose of sinking artesian well or wells at their respective county seats and elsewhere in their county, in any city, town, village or precinct, whether incorporated or not, containing a voting population of four hundred or more electors, according to the entire vote cast in such city, town, village or precinct at the preceding election for delegate to congress; *Provided*, That such artesian well or wells shall not be located or sunk in any locality where the water supply is pure, and sufficient for the wants of the inhabitants thereof. [S. L. 1884, ch. 7, § 1.]

Location of wells.

SEC. 691. That such artesian well or wells shall be put down in some locality convenient and accessible to the inhabitants of the city, town, village or precinct where the same shall be sunk, and upon property where the rights of the people of such locality to the free and uninterrupted use of the water flowing from such well or wells shall be guaranteed and preserved forever. [S. L. 1884, ch. 7, § 2.]

Advertising for proposals.

SEC. 692. The work of sinking such wells shall be let by contract, after the said board of county commissioners shall have advertised for sealed proposals for such work at least thirty days in some newspaper printed in said respective counties. And said commissioners are further authorized to readvertise for said proposals in the manner above mentioned until, in their discretion, a satisfactory proposal has been received. [S. L. 1884, ch. 7, § 3.]

Contractors to give bond.

SEC. 693. The said county commissioners of said respective counties shall require of the contractor or contractors to whom said work shall be let a bond with sufficient security, to the people of the Territory of Wyoming, for the use and benefit of said respective counties, in double the amount of the contract price for doing said work, conditioned that said work shall be done within the time required by said respective boards of county commissioners, and completed in a workmanlike and satisfactory manner. [S. L. 1884, ch. 7, § 4.]

Pay of contractors.

SEC. 694. That said respective boards of county commissioners shall pay to said contractors for doing said work the several amounts agreed upon, in the warrants of said respective counties. [S. L. 1884, ch. 7, § 5.]

CHAPTER 6.

CARBON COUNTY COURT HOUSE BONDS.

SECTION.
695. Site for court house and jail.
696. Plans and specifications.
697. Advertising for proposals.
698. Award of contract.
699. Contractors to give bonds.
700. Authority to issue bonds.
701. Terms of bonds.
702. Registration of bonds.
703. Coupons and their payment.
704. Annual bond tax.
705. Use of bond tax.
SECTION.
706. Retirement of bonds.
707. Time and place of payment.
708. Notice of intended payment.
709. Interest shall cease, when.
710. Security for payment of bonds.
711. Preparation and sale of bonds.
712. Custody of funds—Treasurer's commission.
713. Treasurer shall give separate bond.
714. Expenses to be paid out of general fund.
715. Construction of this chapter.
716. Sale of present jail site.

Site for court house and jail.

SEC. 695. The board of county commissioners of Carbon County are hereby authorized to locate and purchase a suitable site, or receive the same by donation or otherwise, within the limits of the Town of Rawlins, in the name of the County of Carbon, for a court house and jail. [S. L. 1882, ch. 35, § 1.]

Plans and specifications.

SEC. 696. Plans and specifications of said court house and jail shall be prepared by and under the direction of the board of county commissioners before the first day of May, eighteen hundred and eighty-three, which shall be subject to the inspection of all persons during business hours at the office of the county clerk of said county. [S. L. 1882, ch. 35, § 2.]

Advertising for proposals.

SEC. 697. The county commissioners of said county shall advertise for proposals for the building of said court house and jail, according to the plans and specifications adopted by the board of county commissioners, and for furnishing material for the construction of the same for at least thirty days in some newspaper published in said county, and also by posting up three or more written notices of said advertisement in not less than three public places in said county. [S. L. 1882, ch. 35, § 3.]

Award of contract.

SEC. 698. Thirty days after the insertion of the advertisement calling for bids, the board of county commissioners of said county shall open the proposals received in public, and shall award the contract for the building of said court house and jail, and for furnishing material for the construction of the same, in accordance with the plans and specifications adopted, to the lowest responsible bidder; *Provided*, That said board of commissioners may reject any and all bids as they may deem advisable; *Provided, further*, That should the commissioners deem it advisable to reject all bids, they are hereby authorized to advertise again for a period of not less than ten days, specifying in said advertisement the time and manner of receiving and opening said bids, and may continue to advertise in same manner until they obtain a bid in their judgment satisfactory. [S. L. 1882, ch. 35, § 4.]

Contractor to give bond.

SEC. 699. It shall be the duty of the board of county commissioners to exact from the person or persons to whom the contract for building said court house and jail shall be awarded, a bond in double the amount of the proposal of the person or persons to whom the contract is awarded, with two or more sufficient sureties, having the qualifications of sureties as required by law, conditioned for the faithful performance of his or their contract, within the time specified and fixed by said board of county commissioners. [S. L. 1882, ch. 35, § 5.]

Authority to issue bonds.

SEC. 700. For the purpose of providing means for the purchase of a site and for the construction of said court house and jail, the board of county commissioners of said county, are hereby authorized to issue the bonds of said County of Carbon, in any amount not exceeding twenty-five thousand dollars. [S. L. 1882, ch. 35, § 6.]

Terms of bonds.

SEC. 701. Said bond shall be issued in sums of one hundred dollars each, and shall be made payable in fifteen years from date of issue, or sooner as hereinafter provided. And shall bear interest at a rate not exceeding ten per cent. per annum, and shall be regularly numbered from one to two hundred and fifty, inclusive. And before being used, shall be issued by order of the board of county commissioners, registered in the county treasurer's office and countersigned by the county treasurer of said county. [S. L. 1882, ch. 35, § 7.]

Registration bonds.

SEC. 702. The county treasurer of said county shall keep a book in which shall be registered all of said bonds, showing the number of the bond, date of issue, to whom issued, amount, date of redemption and payment of interest, which book shall be open for the inspection of any and all persons during business hours. [S. L. 1882, ch. 35, § 8.]

Coupons and their payment.

SEC. 703. Said bonds shall have coupons attached representing the interest to be paid, and shall be paid by the county treasurer, upon presentation at or after maturity, in the manner hereinafter provided, and shall be cancelled by him by stamping and writing the word "cancelled" across the face of said coupon. Said coupon when presented for payment shall be detached from the bond. [S. L. 1882, ch. 35, § 9.]

Annual bond tax.

SEC. 704. There shall be annually levied by the board of county commissioners of said county, on all the taxable property therein, an assessment not to exceed three mills on the dollar of valuation, which tax shall be known as the "county bond tax," and said tax shall be collected in the same manner as other county taxes, and paid into the county treasury by the collector of taxes. [S. L. 1882, ch. 35, § 10.]

Use of bond tax.

SEC. 705. The county bond tax of Carbon County, shall be used to pay interest and principal of the county bonds and for no other purpose. [S. L. 1882, ch. 35, § 11.]

Retirement of bonds.

SEC. 706. The board of county commissioners shall each year after the second year, retire at least one-tenth of the bonds, beginning with number one and proceeding consecutively upwards by paying the interest and principal due, and cancelling the same, and when there is a surplus of five hundred dollars or more in the general fund of the county, the board of county commissioners are hereby authorized and empowered to transfer the same to the "county bond tax fund," and apply the same to the redemption of the bonds authorized to be issued by this chapter or to purchase bonds in open market with the same. [S. L. 1882, ch. 35, § 12.]

Time and place of payment.

SEC. 707. The interest and principal of said bonds shall be payable at the county treasurer's office of said county on the first and ten succeeding days of January in each year, (Sundays excepted) and if after the payment of interest on said bonds any surplus remains in the county bond fund, it shall forthwith be applied to the redemption of the bonds in the order and manner hereinbefore specified. [S. L. 1882, ch. 35, § 13.]

Notice of intended payment.

SEC. 708. It shall be the duty of the county treasurer, under the direction of the board of county commissioners, to notify the holders of the bonds to be redeemed, by advertisement in some newspaper published in said county, for two consecutive weeks, or by personal notice, that the bonds, giving the number, and to whom issued, will be paid on presentation to the county treasurer. [S. L. 1882, ch. 35, § 14.]

Interest shall cease, when.

SEC. 709. If said bonds are not presented within twenty days from such personal notice, or the completion of the advertisement, they shall fail to draw interest thereafter, and the surplus fund may be used to retire other bonds than those advertised or noticed, and immediately in the order succeeding, and the bonds advertised or noticed for payment, need not be paid until the next year. [S. L. 1882, ch. 35, § 15.]

Security for payment of bonds.

SEC. 710. All the taxable property of said Carbon County is hereby pledged to the payment of the principal and interest of said bonds in the manner herein prescribed, and it shall not be lawful to use or divert any portion of the "county bond tax," for any purpose whatever except the payment of the principal and interest of said bonds in the manner herein prescribed, until the whole of said bonds are redeemed. [S. L. 1882, ch. 35, § 16.]

Preparation and sale of bonds.

SEC. 711. The bonds and coupons herein authorized, shall be prepared by and under the direction of the board of county commissioners, and the said board of county commissioners shall have authority, and they are hereby authorized to negotiate a sale of said bonds for cash, on the most advantageous terms they can for the county, but not at a greater rate of discount than ten per cent. of the par value of the same, and the money received by the sale of said bonds, shall be used in payment for the site of said court house and jail, and for the construction and the furnishing of material for the said court house and jail, and for the necessary furniture for said buildings, and for the improvement of the grounds. [S. L. 1882, ch. 35, § 17.]

Custody of funds—Treasurer's commission.

SEC. 712. The county treasurer shall have the custody of the funds realized from the sale of said bonds until the same is drawn out and by order of the board of county commissioners, and he shall be entitled to two per cent. commission for the safe keeping and accounting for the same; *Provided*, That said county treasurer shall not be entitled to any commission on any funds turned over to his successor in office. [S. L. 1882, ch. 35, § 18.]

Treasurer shall give separate bond.

SEC. 713. It shall be the duty of the board of county commissioners to exact of the county treasurer a separate bond in such sum as they may deem proper, in behalf of the people of Carbon County for the faithful accounting of the money deposited with him as such "county bond fund tax," and realized from the sale of the bonds herein provided. [S. L. 1882, ch. 35, § 19.]

Expenses to be paid out of general fund.

SEC. 714. All the expenses of preparing plans and specifications, advertising, proposal and engraving such bonds and coupons, negotiating and sale of said bonds, and treasurer's commission shall be paid out of the county general fund, upon the order of the board of county commissioners. [S. L. 1882, ch. 35, § 20.]

Construction of this chapter.

SEC. 715. Nothing in any act relating to county revenue or in any other act of the legislature of the Territory of Wyoming, shall be construed to interfere with or impede the provisions of this chapter. [S. L. 1882, ch. 35, § 21.]

Sale of present jail site.

SEC. 716. In case the board of county commissioners of Carbon County shall determine to purchase or procure a site for said court house and jail, and not to use any site for that purpose now owned by the county, then and in that case said board are hereby authorized and empowered to sell the present site of the jail in said county, and the improvements thereon to the highest bidder for cash, said sale to be on said premises after giving public notice thereof in a newspaper published in said Carbon County, for a period not less than two weeks, which notice shall specify the day and hour of the day when said sale shall take place, and all proceeds derived from such sale shall be paid into the county treasury, and shall constitute a part of the fund created by this chapter and shall be used only for the purposes contemplated by this chapter. [S. L. 1882, ch. 35, § 22.]

CHAPTER 7.

FREMONT COUNTY COURT HOUSE BONDS.

SECTION.

717. Site for court house and jail.
718. Plans and specifications—Advertising for proposals.
719. Award of contract.
720. Contractors to give bonds.
721. Authority to issue bonds.
722. Terms of bonds.
723. Registration of bonds.
724. Interest coupons.
725. Tax levy.
726. Application of tax.
727. Retirement of bonds.
728. Time and place of payment.
729. Notice of intended payment.
730. Pledge of taxable property.
731. Preparation and sale of bonds.
732. Custody of bonds—Treasurer's commission.
733. Treasurer to give separate bond.
734. Expenses to be paid from general fund.
735. Sale of old jail building.
736. Construction of this chapter.

Site for court house and jail.

SEC. 717. The board of county commissioners of Fremont County is hereby authorized to locate and purchase, or receive by donation or otherwise, in the name of the said County of Fremont, a suitable site within the limits of the Town of Lander, for a court house and jail; and said board of county commissioners is hereby authorized to erect thereon a court house and jail suitable for the purposes of said county. [S. L. 1886, ch. 9, § 1.]

Plans and specifications—Advertising for proposals.

SEC. 718. Plans and specifications for said court house and jail shall be prepared by or under the direction of the said board of county commissioners, and after their adoption said plans and specifications shall be subject to the inspection of all persons during business hours at the office of the county clerk of said county. The board of county commissioners of said county shall advertise for sealed proposals for the building of said court house and jail according to the plans and specifications so prepared and adopted, and for the furnishing of material for the construction of the same, for at least thirty days in some newspaper published in said county, and in such other newspapers as may be deemed advisable by the said board of county commissioners. Said advertisement shall state the time and manner of receiving and opening such proposals, the time thereof to be not less than ten days after the completion of such advertisement. [S. L. 1886, ch. 9, § 2.]

Award of contract.

SEC. 719. At the time stated in such advertisement the board of county commissioners of said county shall open the proposals received in public, and after time for due consideration of the same shall award the contract for the building of said court house and jail, and for the furnishing of material for the construction of the same in accordance with the said plans and specifications, to the lowest responsible bidder; *Provided*, That the said board of county commissioners may reject any and all bids, as they may deem advisable. And, *Provided*, *further*, That should the said board of county commissioners deem it advisable to reject all bids, they are hereby authorized to advertise for proposals again, for a period not less than fourteen days, specifying in said advertisement the time and manner of receiving and opening said proposals, and may continue to advertise in the same manner until they may obtain a bid in their judgment satisfactory. [S. L. 1886, ch. 9, § 3.]

Contractors to give bonds.

SEC. 720. It shall be the duty of the said board of county commissioners to exact from the person or persons to whom the contract for building said court house and jail shall be awarded, a bond in double the amount of the proposal of the person or persons to whom the contract is awarded, with two or more sufficient sureties having the qualifications of sureties to official bonds as required by law, conditioned for the faithful performance of his or their contract within the time specified and fixed by the said board of county commissioners. [S. L. 1886, ch. 9, § 4.]

Authority to issue bonds.

SEC. 721. For the purpose of providing means for the construction of said court house and jail, and for the necessary furnishing of the same, the said board of county commissioners is hereby authorized to issue the bonds of the said County of Fremont in any amount not exceeding twenty-five thousand dollars; *Provided*, That no greater amount of said bonds shall be issued than may be found necessary for the construction and completion of said court house and jail, and for the necessary furnishing of the same. [S. L. 1886, ch. 9, § 5.]

Terms of bonds.

SEC. 722. Said bonds shall be issued in sums of five hundred dollars each and shall be made payable in eleven years from date of issue or sooner, as hereinafter provided, and shall bear interest at a rate not exceeding eight per centum per annum, and shall be regularly numbered from one to fifty inclusive, and before being used shall be issued by order of the said board of county commissioners, and shall be signed by the chairman thereof, and attested by the county clerk with the county seal, and registered in the county treasurer's office and countersigned by the county treasurer of said county. [S. L. 1886, ch. 9, § 6.]

Registration of bonds.

SEC. 723. The county treasurer of said county shall keep a book which shall be open for the inspection of any and all persons during business hours, in which book shall be registered all of said bonds, showing the number of bonds, date of issue, to whom issued, date of redemption and payment of interest. [S. L. 1886, ch. 9, § 7.]

Interest coupons.

SEC. 724. Said bonds shall have coupons attached representing the interest to be paid, which coupons shall be numbered with the number of the bond to which they belong, and shall be signed by the chairman of the board of county commissioners, and attested by the county clerk and countersigned by the county treasurer, and shall be paid by the county treasurer of said county upon presentation at or after maturity, in the manner hereinafter provided, and shall be cancelled by him by stamping and writing the word "cancelled" across the face thereof. Said coupons may be detached from the bond before presentment for payment, and all coupons when paid shall be kept by the county treasurer. [S. L. 1886, ch. 9, § 8.]

Tax levy.

SEC. 725. There shall be annually levied by the said board of county commissioners of said county, upon all the taxable property therein a sufficient tax, to pay the interest on said bonds as the same shall become due and payable, and to redeem said bonds as provided in this chapter, which tax shall be known as the "court house and jail bond tax," and said tax shall be collected in the same manner as other county taxes and paid into the county treasury by the collector of taxes; *Provided*, That the tax so levied in any one year shall not exceed two mills on the dollars. [S. L. 1886, ch. 9, § 9.]

Application of tax.

SEC. 726. The "court house and jail bond tax" of said county shall be used to pay the interest and principal of said bonds, and for no other purpose. [S. L. 1886, ch. 9, § 10.]

Retirement of bonds.

SEC. 727. The said board of county commissioners shall, each year after the first year, retire at least one-tenth of the said bonds, beginning with number one and proceeding consecutively upwards, by paying the interest and principal and cancelling the bonds so paid. [S. L. 1886, ch. 9, § 11.]

Time and place of payment.

SEC. 728. The interest and principal of said bonds shall be payable at the office of the county treasurer of said county during the first five days of January in each year, Sundays excepted, and each year after the first year, upon the payment of the interest on said bonds, the surplus remaining in "the court house and jail bond tax" shall be forthwith applied to the redemption and retirement of bonds in the order and manner hereinbefore specified. [S. L. 1886, ch. 9, § 12.]

Notice of intended payment.

SEC. 729. It shall be the duty of the county treasurer of said county, under the direction of the said board of county commissioners, to notify the holders of the bonds to be redeemed, by publication for two weeks in some newspaper published in said county, or by personal notice, that said bonds, stating the number and to whom issued, will be paid upon presentation to the said treasurer. If said bonds are not presented within twenty days after such personal notice, or within that time after the completion of such publication, they shall cease to draw interest thereafter. [S. L. 1886, ch. 9, § 13.]

Pledge of taxable property.

SEC. 730. All the taxable property of said Fremont County is hereby pledged to the payment of the principal and interest of said bonds in the manner herein prescribed. And it shall not be lawful to use or divert any portion of the "court house and jail bond tax" for any purpose whatever, except the payment of the interest and principal of said bonds, in the manner herein prescribed, until the whole of said bonds are redeemed. [S. L. 1886, ch. 9, § 14.]

Preparation and sale of bonds.

SEC. 731. The bonds and coupons herein authorized shall be prepared by or under the direction of the board of county commissioners of said county, and the said board of county commissioners shall have authority, and they are hereby authorized, to negotiate a sale of said bonds for cash, on the most advantageous terms; *Provided*, That said bonds shall not be sold for less than the par value of the same, and the money received by the sale of said bonds shall be used in payment for the construction of and the furnishing of material for the said court house and jail, and for the necessary furnishing of the said building. [S. L. 1886, ch. 9, § 15.]

Custody of bonds—Treasurer's commission.

SEC. 732. The county treasurer of said county shall have custody of the funds realized on the sale of said bonds, until the same is drawn out upon order of the board of county commissioners, and he shall receive one and one-half per cent. commission for the safe keeping and accounting for the same; *Provided*, That the said county treasurer shall not be entitled to any commission on any of said funds turned over to his successor in office. [S. L. 1886, ch. 9, § 16.]

Treasurer to give separate bond.

SEC. 733. It shall be the duty of the board of county commissioners to exact of the county treasurer a separate bond, in such sum as they may deem proper, in behalf of the people of Fremont County, conditioned for the faithful accounting of the money deposited with him as such "court house and jail bond tax," and of the money realized from the sale of the bonds herein provided. [S. L. 1886, ch. 9, § 17.]

Expenses to be paid from general fund.

SEC. 734. All the expenses for preparing plans and specifications, advertising for proposals, engraving said bonds and coupont, and negotiating and selling the same, together with the treasurer's commission, shall be paid out of the county general fund, upon the order of the board of county commissioners. [S. L. 1886, ch. 9, § 18.]

Sale of old jail building.

SEC. 735. Upon the completion of said court house and jail, the board of county commissioners of said county shall cause to be sold at public sale, to the highest bidder, for cash, the jail building now owned by said county, said sale to be in view of said building, and to be made after giving notice thereof by publication for two weeks in some newspaper published in said county, which notice shall specify the day and hour when such sale shall take place. The proceeds derived from such sale shall be paid into the county treasury, and shall constitute a part of the fund created by this chapter, and shall be used only for the purposes contemplated by this chapter. [S. L. 1886, ch. 9, § 19.]

Construction of this chapter.

SEC. 736. Nothing in any act relating to county revenue, or in any other act or provision now in force in this territory, shall be construed to interfere with or to impede the provisions of this chapter. [S. L. 1886, ch. 9, § 20.]

CHAPTER 8.

CROOK COUNTY COURT HOUSE BONDS.

SECTION.
737. Authority to commissioners.
738. Plans and specifications.
739. Advertising for proposals.
740. Award of contract.
741. Contractors to give bond.
742. Authority to issue bonds.
743. Terms of bonds.
744. Registration of bonds.
745. Interest coupons.
746. Tax levy.
747. Application of tax.
SECTION.
748. Redemption of bonds.
749. Time and place of payment.
750. Pledge of property.
751. Sale of bonds.
752. Custody of funds—Treasurer's commission.
753. Treasurer to give additional bond.
754. Expenses paid out of general fund.
755. Construction of this chapter.
756. Bond election.
757. Result of election.

Authority to commissioners.

SEC. 737. The board of county commissioners of Crook County are hereby authorized to erect a suitable court house and jail at Sundance, the county seat of the County of Crook, upon a certain piece or parcel of land known as the "court house square," in the Town of Sundance, now owned by said county and donated to it as a site for county buildings. [S. L. 1886, ch. 8, § 1.]

Plans and specifications.

SEC. 738. Plans and specifications of said court house and jail shall be prepared by and under the direction of the board of county commissioners before the fifty day of May, eighteen hundred and eighty-six, which shall be subject to the inspection of all persons during business hours at the office of the county clerk of said county. [S. L. 1886, ch. 20, § 1.]

Advertising for proposals.

SEC. 739. The county commissioners of said county shall advertise for proposals for the building of said court house and jail, according to the plans and specifications adopted by the board of county commissioners, and for furnishing material for the construction of the same, for at least thirty days, in one newspaper published in said Crook County, and in such other newspapers, not exceeding two, as may be selected by the board of county commissioners, said publication to be commenced by the twentieth day of May, eighteen hundred and eighty-six. [S. L. 1886, ch. 20, § 2.]

Award of contract.

SEC. 740. On the first Tuesday in July, eighteen hundred and eighty-six, the board of county commissioners of said county shall open the proposals received, in public, and shall award the contract for the building of said court house and jail, and for furnishing material for the construction of the same, in accordance with the plans and specifications adopted, to the lowest responsible bidder; *Provided*, That said board of county commissioners may reject any and all bids, as they may deem advisable; *Provided*, *further*, That should the commissioners deem it advisable to reject all bids, they are hereby authorized to advertise again, for a period of not less than fourteen days, specifying in said advertisement the time and manner of receiving and opening said bids, and may continue to advertise in the same manner until they obtain a bid or proposal in their judgment satisfactory. [S. L. 1886, ch. 20, § 3.]

Contractors to give bond.

SEC. 741. It shall be the duty of the board of county commissioners to exact from the person or persons to whom the contract for building said court house and jail shall be awarded, a bond in one and one-fourth the amount of the proposal of the person or persons to whom the contract is awarded, with two or more sufficient securities having the qualifications of sureties to official bonds as required by law, conditioned for the faithful performance of his or their contract within the time specified, and fixed by the said board of county commissioners. [S. L. 1886, ch. 8, § 5.]

Authority to issue bonds.

SEC. 742. For the purpose of providing means for the improvement of the grounds, and for the construction of said court house and jail, the board of county commissioners of said county are hereby authorized to issue the bonds of the said County of Crook, Territory of Wyoming, in any amount not exceeding twenty-five thousand dollars; *Provided*, That no greater amount of said bonds shall be issued than may be found necessary for the construction and completion of said court house and jail, and the improvement of the court house square. [S. L. 1886, ch. 8, § 6.]

Terms of bonds.

SEC. 743. Said bonds shall be issued in sums of five hundred dollars each, and shall be made payable in twenty-five years from date of issue, or sooner, as hereinafter provided, and shall bear interest at a rate not exceeding eight per cent. per annum, payable semi-annually, on the first day of January and first day of July of each year, and shall be regularly numbered from one to fifty inclusive, and before being used shall be issued by order of the board of county commissioners, and shall be signed by the chairman of the board of county commissioners, attested by the county clerk with the county seal, registered in the county treasurer's office and counter-signed by the county treasurer of said county. [S. L. 1886, ch. 8, § 7.]

Registration of bonds.

SEC. 744. The county treasurer of said county shall keep a book, which book shall be kept open for the inspection of any and all persons during business hours, in which book shall be registered all of said bonds, showing the number of the bonds, date of issue, to whom issued, amount, date of redemption and payment of interest. [S. L. 1886, ch. 8, § 8.]

Interest coupons.

SEC. 745. Said bonds shall have coupons attached, representing the interest to be paid, and shall be paid by the county treasurer of said county upon presentation at or after maturity, in the manner hereinafter provided, and shall be cancelled by him by stamping and writing the word "cancelled" across the face of said coupon. Said coupon, when presented for payment, shall be detached from the bond and kept by the county treasurer. [S. L. 1886, ch. 8, § 9.]

Tax levy.

SEC. 746. There shall be annually levied by the board of county commissioners of said county, on all the taxable property therein, a sufficient tax to pay the interest on said bonds as the same shall become due and payable, and to redeem said bonds as provided in this chapter, which tax shall be known as the "court house and jail bond tax," and said tax shall be collected in the same manner as other county taxes, and paid into the county treasury by the collector of taxes. [S. L. 1886, ch. 8, § 10.]

Application of tax.

SEC. 747. The "court house and jail bond tax" of Crook County shall be used to pay the interest and principal of said bonds, and for no other purpose. [S. L. 1886, ch. 8, § 11.]

Redemption of bonds.

SEC. 748. The board of county commissioners shall cause to be redeemed each year from the sixth to the twentieth year, both inclusive, after the issue of said bonds, one-twenty-fifth of all the bonds issued, and from the twenty-first to the twenty-fifth year, both inclusive, two-twenty-fifths of all the bonds issued. [S. L. 1886, ch. 8, § 12.]

Time and place of payment.

SEC. 749. The interest and principal of said bonds shall be payable at the county treasurer's office, or at such other place or places as may be designated by the board of county commissioners; and the said bonds shall be redeemed in the order of their issue. It shall be the duty of the county treasurer, under the direction of the board of county commissioners, to notify the holders of the bonds to be redeemed, as hereinafter provided, by advertisement in some newspaper published in said county, for two issues, or by personal notice that the bonds (numbering them, giving the amount, to whom issued) will be paid on presentation to the county treasurer. If said bonds be not presented within thirty days from such personal notice, or the completion of the advertisement, they shall fail to draw interest thereafter. [S. L. 1886, ch. 8, § 13.]

Pledge of property.

SEC. 750. All taxable property of said Crook County is hereby pledged to the payment of the principal and interest of said bonds in the manner herein described, and it shall not be lawful to use or divert any portion of the "court house and jail bond tax" for any purpose whatever, except the payment of the principal and interest of said bonds, in the manner herein prescribed, until the whole of said bonds are redeemed. [S. L. 1886, ch. 8, § 14.]

Sale of bonds.

SEC. 751. The bonds and coupons herein authorized shall be prepared by and under the direction of the board of county commissioners, and the said board of county commissioners shall have authority, and they are hereby authorized, to negotiate a sale of said bonds for cash, on the most advantageous terms; *Provided*, That said bonds shall not be sold for less than ninety-five per centum of the par value of the same; and the money received by the sale of said bonds shall be used in payment for the improvement of said "court house square," and for the construction of said court house and jail, and the furnishing of material therefor. [S. L. 1886, ch. 8, § 15.]

Custody of funds—Treasurer's commission.

SEC. 752. The county treasurer shall have custody of the funds realized from the sale of said bonds, until the same is drawn out upon the order of the board of county commissioners, and he shall be entitled to one and one-half per cent. commission for the safe keeping and accounting for the same; *Provided*, That the said county treasurer shall not be entitled to any commission on any of said funds turned over to his successor in office. [S. L. 1886, ch. 8, § 16.]

Treasurer to give additional bond.

SEC. 753. It shall be the duty of the board of county commissioners to exact of the county treasurer a separate bond, in such sum as they may deem proper, in behalf of the people of Crook County, conditioned for the faithful accounting of the money deposited with him as such "court house and jail bond tax," and realized from the sale of the bonds herein provided. [S. L. 1886, ch. 8, § 17.]

Expenses paid out of general fund.

SEC. 754. All the expenses of preparing plans and specifications, advertising proposals and engraving such bonds and coupons, negotiating and selling of said bonds and treasurer's commission, and providing for the submission of the proposition to bond said county for court house and jail to the electors of said county, shall be paid out of the county general fund upon the order of the board of county commissioners. [S. L. 1886, ch. 8, § 18.]

Construction of this chapter.

SEC. 755. Nothing in any act relating to county revenue, or in any other act or provision now in force in the Territory of Wyoming shall be construed to interfere or to impede the provisions of this chapter. [S. L. 1886, ch. 8, § 19.]

Bond election.

SEC. 756. Before the provisions of this chapter shall be carried into effect or any expense incurred under this chapter, the board of county commissioners of Crook County shall call a special election at all the voting precincts in said county, and shall cause to be inserted in the proclamation, a notice of said election, and as a part thereof a notice that said election will be held in said county on Monday, the fifth day of April, eighteen hundred and eighty-six, for the purpose of ascertaining the will of the electors of said county on the question of bonding said county for the erection of a court house and jail in the manner provided in this chapter, at which election all those in favor of building a court house and jail, and bonding the county therefor, as herein provided, shall deposit with the judges of election a written or printed, or partly written and partly printed ballot, with the words thereon "For the court house and jail bonds," and those opposed to the building of said court house and jail and bonding the county therefor, as herein provided, shall deposit with the judges of election a written or printed, or partly written and partly printed ballot, with the words thereon "Against the court house and jail bonds," and it shall be the duty of the county commissioners of said county to provide ballot boxes for the several voting precincts therein, in which shall be deposited the vote for and against the issuing of said court house and jail bonds. [S. L. 1886, ch. 20, § 4.]

Result of election.

SEC. 757. When the votes in all the precints in said County of Crook are returned and canvassed in the manner provided by election laws of the Territory of Wyoming, if it shall be found that a majority of the votes cast are "for the court house and jail bonds," then it shall be the duty ot the county commissioners of said Crook County to carry into effect the provisions of this chapter, but if a majority of the votes cast are "against the court house and jail bonds," then no further proceedings shall be taken and no further expense incurred under this chapter. [S. L. 1886, ch. 8, § 21.]

CHAPTER 9.

SPECIAL TAX LEGISLATION FOR SWEETWATER COUNTY.

SECTION.
758. Commissioners authorized to levy special tax.
759. Limitation upon issuing warrants and contracting debts.
760. Restrictions upon paying collector of taxes.
761. Collector to present verified claim.
762. Claim of G. L. Vickery for 1882.

Commissioners authorized to levy special tax.

SEC. 758. For the purpose of paying the present outstanding indebtedness of the County of Sweetwater, the board of county commissioners of said county are hereby authorized to levy an annual tax of not exceeding eight mills on the dollar on the assessed valuation of the taxable property of said county in addition to the levies now permitted by law, and all moneys collected upon the levy hereby anthorized shall be kept as a separate fund to be called the "county debt fund," and shall be used and applied only for the payment of the principal and interest due upon the warrants of said county outstanding on March ninth, eighteen hundred and eighty-two, and shall be annually applied as soon as collected to the payment of all such warrants so outstanding, in the same order as to priority of payment, as is now or hereafter may be provided by law as to the payment of county warrants. [S. L. 1882, ch. 100, § 1.]

Limitation upon issuing warrants and contracting debts.

SEC. 759. Hereafter it shall be unlawful for the county commissioners of the said County of Sweetwater to issue any warrants or incur any indebtedness, in any one year in excess of the amount of the taxes collectable in said county for the same year as shown by the tax duplicate for that year, and in case of a violation of this section by any member of the said board of the county commissioners the member or members so offending shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding five thousand dollars, and shall be personally and severally liable to the holder of any warrant so issued in violation of this section for the amount of such warrant and the interest thereon, but the county shall in no way be liable upon such warrant. [S. L. 1882, ch. 100, § 2.]

Restrictions upon paying collector of taxes.

SEC. 760. Whenever it shall appear to said board of county commissioners, that the collector of the taxes in said county, has not collected all the taxes due from any party or parties in said county for any year, the said board shall not audit, allow or pay any bill, account, demand or claim by such collector against said county until it has been shown to the said board by affidavit, that such taxes could not be collected, by reason of the party or parties owing the same having no property, either real or personal in the county which could have been seized, levied upon, distrained, taken or sold for such taxes during that portion of the year when such taxes were payable, and payment thereof could not have been enforced by distraint and sale or sale of property therefor. [S. L. 1882, ch. 100, § 3.]

Collector to present verified claim.

SEC. 761. The collector of taxes in said county shall not be entitled to any compensation for his services in collecting taxes in said county, until his account therefor shall be made out and verified and allowed in the same manner as other claims against said county. [S. L. 1882, ch. 100, § 4.]

Claim of G. L. Vickery for 1882.

SEC. 762. The board of county commissioners of the County of Sweetwater are hereby authorized and empowered, in their discretion, to settle the account of G. L. Vickery, for his services as tax collector for said county, for the year eighteen hundred and eighty-two, and to pay him for such services such amount as they may deem just and equitable, any previous law of this territory to the contrary notwithstanding. [S. L. 1884, ch. 72, § 1.]

CHAPTER 10.

JOHNSON COUNTY COURT HOUSE BONDS.

SECTION.
763. Location of site.
764. Plans and specifications.
765. Advertising for proposals.
766. Awarding contract.
767. Contractor to give bonds.
768. Authority te issue bonds.
769. Terms of bonds.
770. Registration of bonds.
771. Interest coupons.
772. County bond tax.
773. Application of tax.
774. Redemption of bonds.
SECTION.
775. Time and place of payment.
776. Notice of intended payment.
777. When interest ceases.
778. Pledge of taxable property.
779. Sale of bonds.
780. Custody of funds—Treasurer's commission.
781. Separate bond of treasurer.
782. Preliminary expenses paid out of general fund.
783. Construction of this chapter.
784. Purchase of new site and sale of old one.

Location of site.

SEC. 763. The board of county commissioners of Johnson County are hereby authorized to locate and purchase a suitable site, or to receive the same by donation or otherwise, within the limits of the City of Buffalo, in the name of the County of Johnson, for a court house and jail. [S. L. 1884, ch. 49, § 1.]

Plans and specifications.

SEC. 764. Plans and specifications of said court house and jail shall be prepared by and under the direction of the board of county commissioners before the first day of May, eighteen hundred and eighty-four which shall be subject to the inspection of all persons during business hours at the office of the county clerk of said county. [S. L. 1884, ch. 49, § 2.]

Advertising for proposals.

SEC. 765. The county commissioners of said county shall advertise for proposals for the building of said court house and jail according to the plans and specifications adopted by the board of county commissioners, and for furnishing material for the construction of the same, for at least thirty days in some newspaper published in said county, and also by posting up three or more written notices of said advertisement in not less than three public places in said county. [S. L. 1884, ch. 49, § 3.]

Awarding contract.

SEC. 766. Thirty days after the insertion of the advertisement calling for bids, the board of county commissioners of said county shall open the proposals received, in public, and shall award the contract for the building of said court house and jail and for furnishing material for the construction of the same in accordance with the plans and specifications adopted, to the lowest responsible bidder; *Provided*, That the said board of county commissioners may reject any and all bids, as they may deem advisable; *Provided*, *further*, That should the commissioners deem it advisable to reject all bids, they are hereby authorized to advertise again for a period of not less than ten days, specifying in said advertisement the time and manner of receiving and opening said bids, and may continue to advertise in same manner and until they may obtain a bid in their judgment satisfactory. [S. L. 1884, ch. 49, § 4.]

Contractor to give bonds.

SEC. 767. It shall be the duty of the board of county commissioners to exact from the person or persons to whom the contract for building said court house and jail shall be awarded, a bond in double the amount of the proposal of the person or persons to whom the contract is awarded, with two or more sufficient sureties having the qualifications of sureties as required by law, conditioned for the faithful performance of his or their contract within the time specified and fixed by said board of county commissioners. [S. L. 1884, ch. 49, § 5.]

Authority to issue bonds.

SEC. 768. For the purpose of providing means for the purchase of a site and for the construction of said court house and jail, the board of county commissioners of said county are hereby authorized to issue the bonds of the said County of Johnson, Territory of Wyoming, in any amount not exceeding thirty thousand dollars. [S. L. 1884, ch. 49, § 6.]

Terms of bonds.

SEC. 769. Said bonds shall be issued in sums of one hundred dollars each, and shall be made payable in fifteen years from date of issue, or sooner, as hereinafter provided, and shall bear interest at a rate not exceeding eight per cent. per annum, and shall be regularly numbered from one to three hundred inclusive, and before being used shall be issued by order of the board of county commissioners, registered in the county treasurer's office and countersigned by the county treasurer of said county. [S. L. 1884, ch. 49, § 7.]

Registration of bonds.

SEC. 770. The county treasurer of said county shall keep a book in which shall be registered all of said bonds, showing the number of the bond, date of issue, to whom issued, amount, date of redemption and payment of interest, which book shall be open for the inspection of any and all persons during business hours. [S. L. 1884, ch. 49, § 8.]

Interest coupons.

SEC. 771. Said bonds shall have coupons attached, representing the interest to be paid, and shall be paid by the county treasurer upon presentation at or after maturity, in the manner hereinafter provided, and shall be cancelled by him by stamping and writing the word "cancelled" across the face of said coupon. Said coupon, when presented for payment, shall be detached from the bond. [S. L. 1884, ch. 49, § 9.]

"County bond tax."

SEC. 772. There shall be annually levied by the board of county commissioners of said county, on all the taxable property therein, an assessment not to exceed two mills on the dollar of valuation, which tax shall be known as the "county bond tax," and said tax shall be collected in the same manner as other county taxes and paid into the county treasury by the collector of taxes. [S. L. 1884, ch. 49, § 10.]

Application of tax.

SEC. 773. The county bond tax of Johnson County shall be used to pay interest and principal of the county bonds and for no other purpose. [S. L. 1884, ch. 49, § 11.]

Redemption of bonds.

SEC. 774. The board of county commissioners shall each year after the second year retire at least one-tenth of the bonds, beginning with number one and proceeding consecutively upwards, by paying the interest and principal due and cancelling the same, and when there is a surplus of five hundred dollars or more in the general fund of the county, the board of county commissioners are hereby authorized and empowered to transfer the same to the "county bond tax fund" and apply the same to the redemption of the bonds authorized to be issued by this chapter or to purchase bonds in open market with the same. [S. L. 1884, ch. 49, § 12.]

Time and place of payment.

SEC. 775. The interest and principal of said bonds shall be payable at the county treasurer's office of said county on the first and ten succeeding days of January in each year (Sundays excepted), and if, after the payment of interest on said bonds, any surplus remains in the county bond fund, it shall forthwith be applied to the redemption of the bonds in the order and manner hereinbefore specified. [S. L. 1884, ch. 49, § 13.]

Notice of intended payment.

SEC. 776. It shall be the duty of the county treasurer, under the direction of the board of county commissioners, to notify the holders of the bonds to be redeemed by advertisement in some newspaper published in said county for two consecutive weeks, or by personal notice, that the bonds, giving the number and to whom issued, will be paid upon presentation thereof to the county treasurer. [S. L. 1884, ch. 49, § 14.]

When interest ceases.

SEC. 777. If said bonds are not presented within twenty days from such personal notice, or the completion of the advertisement, they shall fail to draw interest thereafter, and the surplus fund may be used to retire other bonds than those advertised or noticed and immediately in the order succeeding, and the bonds advertised or noticed for payment need not be paid until the next year. [S. L. 1884, ch. 49, § 15.]

Pledge of taxable property.

SEC. 778. All taxable property of said Johnson County is hereby pledged to the payment of the principal and interest of said bonds, in the manner herein prescribed, and it shall not be lawful to use or divert any portion of the county bond tax for any purpose whatever except the payment of the principal and interest of said bonds, in the manner herein prescribed, until the whole of said bonds are redeemed. [S. L. 1884, ch. 49, § 16.]

Sale of bonds.

SEC. 779. The bonds and coupons herein authorized shall be prepared by and under the direction of the board of county commissioners, and the said board of county commissioners shall have authority and they are hereby authorized to negotiate a sale of said bonds for cash on the most advantageous terms they can for the county, but not at a greater rate of discount than ten per cent. of the par value of the same, and the money received by the sale of said bonds shall be used in payment for the site of said court house and jail and for the construction and the furnishing of material for the said court house and jail and furniture for said buildings, and for the improvement of the grounds. [S. L. 1884, ch. 49, § 17.]

Custody of funds—Treasurer's commission.

SEC. 780. The county treasurer shall have the custody of the funds realized from the sale of said bonds until the same is drawn out and by order of the board of county commissioners, and he shall be entitled to two per cent. commission for the safe keeping and accounting for the same; *Provided*, That said county treasurer shall not be entitled to any commission on any funds turned over to his successor in office. [S. L. 1884, ch. 49, § 18.]

Separate bond of treasurer.

SEC. 781. It shall be the duty of the board of county commissioners to exact of the county treasurer a separate bond in such sum as they may deem proper, in behalf of the people of Johnson county, for the faithful accounting of the money deposited with him as such "county bond fund tax" and realized from the sale of the bonds herein provided. [S. L. 1884, ch. 49, § 19.]

Preliminary expenses paid out of general fund.

SEC. 782. All the expenses of preparing plans and specifications, advertising proposals and engraving such bonds and coupons, negotiating and sale of said bonds and treasurer's commission, shall be paid out of the county general fund, upon the order of the board of county commissioners. [S. L. 1884, ch. 49, § 20.]

Construction of this chapter.

SEC. 783. Nothing in any act relating to county revenue, or in any other act now in force shall be construed to interfere with or impede the provisions of this chapter. [S. L. 1884, ch. 49, § 21.]

Purchase of new site and sale of old one.

SEC. 784. In case the board of county commissioners of Johnson County shall determine to purchase or procure a site for said court house and jail and not to use any site for that purpose now owned by the county, then and in that case said board are hereby authorized and empowered to sell the present site of the court house and jail in said county, and the improvements thereon, to the highest bidder for cash, said sale to be on said premises, after giving public notice thereof in a newspaper published in Johnson County, for a period not less than two weeks, which notice shall specify the day and hour when said sale shall take place, and all proceeds derived from such sale shall be paid into the county treasury, and shall constitute a part of the fund created by this chapter and shall be used only for the purpose contemplated by this chapter. [S. L. 1884, ch. 49, § 22.]

CHAPTER 11.

UINTA COUNTY JAIL BONDS.

SECTION.
785. Authority to issue bonds.
786. Contracting power given commissioners.
787. Terms of bonds.
788. Registration of bonds.
789. Execution and sale of bonds.
790. Interest coupons and their payment.
791. Bond tax.
792. Notice to bond holders of intended payment.
SECTION.
793. Redemption of bonds.
794. Pledge of taxable property.
795. Custody of funds—Treasurer to give separate bond.
796. Compensation of clerk and treasurer.
797. Payment of preliminary expenses.
798. Bond election.
799. Result of election.

Authority to issue bonds.

SEC. 785. The board of county commissioners of the County of Uinta is hereby authorized to build, or cause to be built, a jail and jailor's residence on any site owned by the county, or to purchase a site or sites, or receive the same by donation or otherwise, within the limits of the town of Evanston, in said county, and to secure a deed for the same for the said county, for a jail and jailor's residence, and the said board are hereby authorized to issue bonds of the said county to defray the expenses incurred and to be incurred, in the building and completion of said jail and residence not exceeding the sum of ten thousand dollars. [S. L. 1882, ch. 10, § 1.]

Contracting power given commissioners.

SEC. 786. Said board of county commissioners is hereby vested with full power to make all necessary arrangements and contracts for the building of said jail and residence in such manner as said board may deem for the interest of said county, and shall exact a bond from the contractor in double the amount of the contract, with good and sufficient sureties, for the faithful execution of such contract. [S. L. 1882, ch. 10, § 2.]

Terms of bonds.

SEC. 787. Said board of county commissioners shall issue bonds for the said jail and residence to the amount hereinbefore mentioned, or so much thereof as shall be sufficient for the purpose contemplated by this chapter; said bonds shall be issued in sums of not less than twenty-five dollars each, and shall be redeemed by said county within a period not exceeding ten years; and not less than one year from the date of issue, and shall bear interest at the rate of eight per centum per annum on each dollar of their face; said bonds shall be regularly numbered from one upwards, and before being issued shall be registered in the county treasurer's office of said county, and countersigned by the treasurer. [S. L. 1882, ch. 10, § 3.]

Registration of bonds.

SEC. 788. The county treasurer of said county shall keep a book in which shall be registered all of said bonds, showing the number of the bond, and date of issue, to whom issued, amount, number of coupons, date of redemption, date of registry, and payment of interest, which book, during business hours, shall be open to inspection. [S. L. 1882, ch. 10, § 4.]

Execution and sale of bonds.

SEC. 789. All bonds issued by virtue of this chapter shall be signed by the chairman of the board of county commissioners of said county, and attested by the county clerk, with the seal thereof attached, and no bond shall be sold for a less sum than ninety-five cents on the dollar, and shall not be sold until thirty days notice shall have been given in some newspaper of general circulation in the territory of Wyoming. [S. L. 1882, ch. 10, § 5.]

Interest coupons and their payment.

SEC. 790. Said bonds shall have coupons attached representing the interest to be paid each year, and the coupon representing the interest shall be detached from the bond before presentation for payment of the interest for the year corresponding, and shall forthwith be cancelled by the treasurer by writing the word "cancelled" across the face thereof; and the interest on all bonds shall be payable at the county treasurer's office of said county during the month of December in each year; *Provided*, That the county treasurer may anticipate said interest, and pay the same at any time during the month of November of each year, if he should have funds in his hands for such purpose, and if, after the payment of interest on said bonds, any surplus remains in the "jail and residence bond fund" hereinafter mentioned, it shall be applied to the redemption of the bonds in the order of their number, commencing with the lowest number. [S. L. 1882, ch. 10, § 6.]

Bond Tax.

SEC. 791. There shall annually be levied by the board of county commissioners of said county, on all taxable property therein, a tax not to exceed five mills on the dollar of valuation, which tax shall be known as the "jail and residence bond fund," and said tax shall be payable only in gold or silver coin, or in United States treasury notes, or national bank notes, and shall be used to pay interest and principal of said bonds, and for no other purpose, and said tax shall be collected in the same manner as other county taxes, and paid into the county treasury by the collector of taxes. [S. 1882, ch. 10, § 7.]

Notice to bondholders of intended payment.

SEC. 792. Whenever there is five hundred dollars in the hands of the county treasurer belonging to the "jail and residence bond fund" over and above the necessary amount to pay the interest on said bonds for the current year, said treasurer shall notify the holders of the lowest numbered bonds outstanding by advertisement in some newspaper of general circulation in the Territory of Wyoming for ten consecutive days (Sundays excepted) or by personal notice, at his option, that the bonds (numbering them, giving the amount and to whom issued) will be paid on presentation to said treasurer, and that if said bonds are not presented within thirty days from such personal notice, or the completion of the advertisement, they will fail to draw interest thereafter. Should any bond or bonds mentioned in such notice or advertisement not be presented as above specified, such bond or bonds shall fail to draw interest thereafter, and the surplus fund intended for the payment of said bonds shall be used in the payment of the next lowest numbered bonds not included in said notice or advertisement, and the bonds not presented need not be paid until the following year. [S. L. 1882, ch. 10, § 8.]

Redemption of bonds.

SEC. 793. The board of county commissioners shall each year, after the first, retire as many of said bonds as can be redeemed with the amount of "jail and residence bond fund" at the time in the hands of the county treasurer. In all cases, said bonds shall be redeemed by the payment of number one, and proceeding consecutively upwards with those outstanding. All bonds, when redeemed, shall immediately be cancelled by the county treasurer in such a manner as said board of county commissioners may direct, and whenever there is a surplus of five hundred dollars and over in the "general county fund," such commissioners may direct and transfer the same to the "jail and residence bond fund," and apply the amount to the redemption of bonds in the manner hereinbefore specified, or may purchase bonds in the open market with the same; *Provided*, That no money belonging to the "general county fund" shall be diverted or transferred whilst any county warrants of said county are outstanding. [S. L. 1882, ch. 10, § 9.]

Pledge of taxable property.

SEC. 794. All taxable property of said Uinta County is hereby pledged to the payment of the principal and interest of said bonds in the manner herein prescribed, and it shall not be lawful to use or divert any portion of said "jail and residence bond fund" for any purpose whatever except the payment of said principal and interest. [S. L. 1882, ch. 10, § 10.]

Custody of funds—Treasurer to give separate bond.

SEC. 795. The county treasurer shall have the custody of all funds realized from the sale of said bonds, and shall pay the same out on the written order of said board of county commissioners, or a majority thereof, taking the receipt, in every case, of the person in whose favor said order is drawn, which receipt and order shall be his voucher for the money so paid out, and said board of county commissioners shall exact of said county treasurer a separate bond in such sum as they may deem proper on behalf of said Uinta County, with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him by this chapter and the faithful accounting for the money deposited with him and realized from the sale of bonds as herein provided for. [S. L. 1882, ch. 10, § 11.]

Compensation of clerk and treasurer.

SEC. 796. The county clerk and county treasurer shall be allowed such compensation for such services rendered by them, under the requirements of this chapter, as said board of county commissioners may deem just and equitable; *Provided*, That said officers' services in the collection and disbursement of money for the redemption of bonds and the payment of the interest thereon, is not to be included by said commissioners in their estimate for the above compensation, but said officers shall be allowed the same fees, compensation, or percentage in the collection and disbursement of the money above mentioned as may be allowed them respectively in the collection and disbursement of other funds under any law of this territory. [S. L. 1882, ch. 10, § 12.]

Payment of preliminary expenses.

SEC. 797. All expenses incurred by said board of county commissioners in carrying out the provisions and intention of this chapter, shall be paid out of the "general county fund" on the order of said commissioners. [S. L. 1882, ch. 10, § 13.]

Bond election.

SEC. 798. Before the provisions of this chapter shall be carried into effect or any expense incurred under this chapter, the board of county commissioners of Uinta County shall submit the question at a regular election at all the precincts in said county for the purpose of ascertaining the will of the qualified electors of said county upon the question of building said jail and residence; the ballots provided for said election shall read "for a jail and residence," or "against a jail and residence," and the election shall be conducted and the vote canvassed in the manner prescribed by the laws governing general elections. [S. L. 1882, ch. 10, § 14.]

Result of election.

SEC. 799. When all the votes in the several precincts in said County of Uinta, upon the foregoing proposition, are returned and canvassed in the manner provided, if it be found that a majority of the votes cast are "for a jail and residence," then it shall be the duty of the board of county commissioners of said Uinta County to carry into effect the provisions of this chapter, but if a majority of the votes cast are "against a jail and residence," then no proceedings shall be taken and no expenses incurred under this chapter. [S. L. 1882, ch. 10, § 15.]

CHAPTER 12.

UINTA COUNTY FUNDING BONDS.

SECTION.
800. Authority to issue funding bonds.
801. Registration of bonds.
802. Interest coupons.
803. Tax levy.
804. Redemption of bonds.
805. Time and place of payment.
806. Notice of redemption of bonds.
807. When interest ceases.
SECTION.
808. Pledge of taxable property.
809. Sale of bonds.
810. Custody of funds—Treasurer's commission.
811. Treasurer to give separate bond.
812. Payment of preliminary expenses.
813. Construction of this chapter.
814. Restriction upon contracting debts.

Authority to issue funding bonds.

SEC. 800. The board of county commissioners of Uinta County are hereby authorized, for the purpose of funding the existing floating indebtedness of said Uinta County, to issue the bonds of the said county in any amount not exceeding one hundred thousand dollars, which said bonds shall be of the denomination of one thousand dollars each, shall be numbered from one upward, shall be made payable in thirty years from date of issue, or sooner, as hereinafter provided, and shall bear interest at a rate not exceeding six per cent. per annum, and shall not be sold, disposed of or negotiated at a greater rate of discount than five per cent. of the par value of the same; and before being used said bonds shall be issued by order of the board of county commissioners, registered in the county treasurer's office, signed by the chairman of the board of county commissioners and by the county clerk of said county, and countersigned by the county treasurer of said county, and have the seal of said county attached thereto, and no greater amount of said bonds shall be issued than may be found necessary for the purposes herein specified. [S. L. 1886, ch. 71, § 1.]

Registration of bonds.

SEC. 801. The county treasurer of said county shall keep a book in which shall be registered all of said bonds, showing the number of the bond, the date of issue, to whom issued, amount, date of redemption and payment of interest, which books shall be open for the inspection of any and all persons during business hours. [S. L. 1886, ch. 71, § 2.]

Interest coupons.

SEC. 802. Said bonds shall have coupons attached representing the interest to be paid, and shall be paid by the county treasurer at or after maturity, in the manner hereinafter provided, and shall be cancelled by him by cutting the word "paid" across the face of said coupon. Said coupons shall be signed in the same manner as the bond, and each coupon, before being presented for payment, shall be detached from the bond. [S. L. 1886, ch. 71, § 3.]

Tax levy.

SEC. 803. The board of county commissioners of said county shall annually levy upon all the taxable property in said county a sufficient tax to pay interest on said bonds as the same become due, and to redeem and retire said bonds as provided in this chapter, which tax shall be known as the "county bond tax," and said tax shall be collected in the same manner as other county taxes, and paid into the county treasury by the collector of taxes, and the said county bond tax shall be used only to pay interest and principal of the said bonds. [S. L. 1886, ch 71, § 4.]

Redemption of bonds.

SEC. 804. The board of county commissioners of said county shall each year, from the tenth year to the nineteenth year, both inclusive, after the issue of said bonds, redeem at least four per cent. of all the said bonds issued, and each year from the twentieth to the twenty-ninth year, both inclusive, after the issue of said bonds, the said board shall redeem six per cent. of all the bonds outstanding, and prior to the tenth year no tax shall be levied for the purpose of paying the principal of any of said bonds; the said bonds shall be redeemed in the order of their issue. [S. L. 1886, ch. 71, § 5.]

Time and place of payment.

SEC. 805. The interest and principal of said bonds shall be payable at the county treasurer's office of said county, on the first and ten succeeding days of January in each year, Sundays excepted, and if after the payment of interest on said bonds any surplus remains in the county bond fund, it shall forthwith be applied to the redemption of the bonds in the order and manner herein specified. [S. L. 1886, ch. 71, § 6.]

Notice of redemption of bonds.

SEC. 806. It shall be the duty of the county treasurer, under the direction of the board of county commissioners, to notify the holders of the bonds to be redeemed, by advertisement in some newspaper published in said county, for two consecutive weeks, or by personal notice, that the bonds, giving the number and to whom issued, will be paid on presentation thereof to the county treasurer. [S. L. 1886, ch. 71, § 7.]

When interest ceases.

SEC. 807. If said bonds are not presented within twenty days from such personal service of notice, or from the completion of the advertisement, they shall fail to draw interest thereafter, and the surplus funds may be used to retire other bonds than those advertised or noticed, and immediately in the order succeeding, and the bonds advertised or noticed for payment need not be paid until the next year. [S. L. 1886, ch. 71, § 8.]

Pledge of taxable property.

SEC. 808. All taxable property of said Uinta county is hereby pledged to the payment of the principal and interest of the said bonds in the manner herein prescribed, and it shall not be lawful to use or divert any portion of the county bond tax for any purpose whatever, except the payment of the principal and interest of said bonds, in the manner herein prescribed, until the whole of said bonds are redeemed. [S. L. 1886, ch. 71, § 9.]

Sale of bonds.

SEC. 809. The bonds and coupons herein authorized shall be prepared by and under the direction of the board of county commissioners of said county, and the said board of county commissioners shall have the authority, and they are hereby authorized to negotiate a sale of said bonds for cash on the most advantageous terms they can for the county, but not at a greater rate of discount than five per cent. of the par value of the same, and the money received by the sale of said bonds shall be used in payment of the existing floating indebtedness, and the outstanding warrants of said county; and whenever any money is received by the sale of said bonds or any of them, the county treasurer of said county, under direction of said board of county commissioners, shall have authority, and it shall be their duty, to call in as many of the outstanding warrants of said county for payment out of the funds so realized from the sale of said bonds, as there are funds with which to pay the same—said outstanding warrants to be entitled to such preference as to payment as is now provided by law. [S. L. 1886, ch. 71, § 10.]

Custody of funds- Treasurer's commission.

SEC. 810. The county treasurer shall have the custody of the funds realized from the sale of said bonds, until the same is drawn out by order of the board of county commissioners, and he shall be entitled to such compensation as the county commissioners shall direct, not to exceed one per cent. commission for the safe keeping and accounting for the same; *Provided*, That said county treasurer shall not be entitled to any commission on any of such funds turned over to his successor in office. [S. L. 1886, ch. 71, § 11.]

Treasurer to give separate bond.

SEC. 811. It shall be the duty of the board of county commissioners of said county to exact of the county treasurer a separate bond, with sureties, in such sum as they may deem proper, for the faithful accounting of the money deposited with him as such county bond fund tax, and realized from the sale of the bonds herein provided. [S. L. 1886, ch. 71, § 12.]

Payment of preliminary expenses.

SEC. 812. All the expenses of engraving said bonds and coupons, and negotiation and sale of said bonds and treasurer's commission, shall be paid out of the county general fund, upon the order of the board of county commissioners. Nothing in any act relating to county revenue, or in any other act now in force in the Territory of Wyoming, shall be construed to interfere with or impede the provisions of the preceding sections of this chapter. [S. L. 1886, ch. 71, § 13.]

Construction of this chapter.

SEC. 813. Nothing in this chapter contained shall be construed as in any way repealing, modifying, amending, restricting or impairing the force or effect the last preceding chapter. [S. L. 1886, ch. 71, § 14.

Restrictions upon contracting debts.

SEC. 814. It shall be the duty of the county commissioners at the time of making the annual levy of taxes for county purposes of said county, to levy a sufficient tax for such purposes, within the statutory limits, to pay the current expenses of said county, and said board of county commissioners shall not make any expenditures or incur any indebtedness in the management of the current affairs of said county beyond the amount raised by the annual tax so levied. This section shall not apply to or affect any bonded indebtedness. [S. L. 1886, ch. 71, § 15.]

CHAPTER 13.

UINTA COUNTY HOSPITAL.

SECTION.
815. Authority to erect hospital and issue bonds.
816. Registration of bonds.
817. Pledge of taxable property.
818. Redemption of bonds.

SECTION.
819. Committee to construct building.
820. Conveyance to sisters of charity.
821. Use and maintenance of hospital.
822. Construction of this chapter.

Authority to erect hospital and issue bonds.

SEC. 815. The board of county commissioners of Uinta County, are hereby authorized and empowered to build and equip, or cause to be built and equipped, in or near the town of Evanston, in said County of Uinta, a hospital for the maintenance and care of the poor of said county, and for the proper medical treatment and care of the sick and infirm therein, and for the erection and equipment of said hospital, the said board of county commissioners are hereby authorized and vested with full power to issue coupon bonds of said County of Uinta in the sum of ten thousand dollars, which bonds shall be numbered from one consecutively upward, and which said bonds shall be of the denomination of one hundred dollars each, payable in twenty years from the date of issue, redeemable at the pleasure of said county after the expiration of five years from the date of issue, and shall bear interest at a rate not exceeding eight per cent. per annum, which interest shall be payable annually on the first day of January in each year, in lawful money of the United States of America, at the office of the county treasurer of said county, at the Town of Evanston, in said County of Uinta; said bonds and the interest coupons shall be signed by the chairman of the board of county commissioners and countersigned by the county clerk and county treasurer of said county, and the issue thereof shall not exceed the sum herein provided for; *Provided*, That said bonds shall not be sold for less than their par value. [S. L. 1886, ch. 96, § 1.]

Registration of bonds.

SEC. 816. The county treasurer of said county shall keep a book in which shall be registered all of said bonds, showing the number of each bond, the date of issue, to whom issued, the amount for which issued, date of redemption and payment of interest, which book shall be open to any and all persons desiring to examine the same during business hours. [S. L. 1886, ch. 96, § 2.]

Pledge of taxable property.

SEC. 817. All of the taxable property of said county is hereby pledged for the payment of said bonds, principal and interest, and there shall be annually levied and collected on all the taxable property, real, personal and mixed within said county, a tax not to exceed five mills on the dollar of valuation, to pay the interest on said bonds as the same become due, and to redeem said bonds as provided in this chapter, which tax shall be levied and collected in the same manner as the other taxes of said county; said tax shall be known as the "county hospital bond tax" and shall be used for the payment of interest and principal of bonds issued under the provisions of this chapter, and for no other purpose; and said bonds shall be redeemed in the order of their issue. [S. L. 1886, ch. 96, § 3.]

Redemption of bonds.

SEC. 818. The board of county commissioners shall each year after the fifth retire as many of said bonds as can be redeemed with the amount of said county hospital bond fund at the time in the hands of the county treasurer, and cause such retired bonds to be cancelled by cutting the word "paid" therein, and all cancelled bonds shall be turned over to the board of county commissioners at such times as they may direct. [S. L. 1886, ch. 96, § 4.]

Committee to construct building.

SEC. 819. I. C. Winslow, Joseph E. Cashin and Christopher Fitzgerald are hereby constituted and appointed a committee to select and purchase a site for said hospital, and superintend the construction of said hospital, and they or a majority of them shall have power to receive and reject bids, and make contracts for the building of the same, and to receive and sell such bonds as may be issued under the provisions of this chapter, and they shall apply the proceeds derived from the sale of such bonds for the purposes of this chapter, and any vacancy occurring in said committee shall be filled by the remaining members thereof, and the person so selected to fill said vacancy shall be deemed and considered a member of said committee the same as if he had been constituted and appointed thereto under the provisions of this chapter, and before entering upon their duties each member of said committee shall enter into a bond in the sum of five thousand dollars, with two or more good and sufficient sureties conditioned for the faithful performance of the duties required of him as such committee-man, and that he will render a true and just account of all moneys received and expended in the construction of said building, which shall run to Uinta County, and shall be approved by the board of county commissioners and filed with the county clerk of said county, and said committee shall report all their doings in the premises to the board of county commissioners of said county whenever required by said board so to do. [S. L. 1886, ch. 96, § 5.]

Conveyance to sisters of charity.

SEC. 820.—As soon as the hospital herein provided for shall be completed under the provisions of this chapter, it shall be the duty of the county commissioners of said Uinta County immediately to transfer the same, together with all real and personal property connected therewith, by a proper deed of conveyance for that purpose, to some suitable and proper person in trust for the sisters of charity, to be used and maintained by said sisters of charity as a hospital under the provisions of this chapter; *Provided*, That whenever said hospital shall cease to be used for the purposes and in the manner contemplated by this chapter, the title thereto shall immediately revert to the said County of Uinta. [S. L. 1886, ch. 96, § 6.]

Use and maintenance of hospital.

SEC. 821. And it is hereby made the duty of said sisters of charity to sustain and carry on said hospital in conformity with the provisions of this chapter, and to properly care for and furnish medical attendance to all indigent persons who are citizens of said Uinta County, when called upon so to do by the board of county commissioners of said county; *Provided*, That in such cases there shall be paid for the keeping and care and medical attendance of such indigent person a sum not to exceed one dollar per day, which shall be paid in warrants of said Uinta County, duly authorized and issued according to law. [S. L. 1886, ch. 96, § 7.]

Construction of this chapter.

SEC. 822. Nothing in any act relating to county revenue, or in any other act now in force, shall be construed to interfere with or impede the provisions of this chapter. [S. L. 1886, ch. 96, § 8.]

TITLE 6. COURTS.

CHAPTER 1. SUPREME COURT.
CHAPTER 2. DISTRICT COURT.

CHAPTER 1.

SUPREME COURT.

SECTION.
823. Terms of supreme court.
824. Adjournments.
825. Transaction of business at adjourned terms.
826. Rules of practice and forms of process.
827. Process, how tested and executed.
828. Opinions to be in writing.
829. Synopsis of decisions to be published.
830. When reporter to be appointed.
831. Filling vacancy in office of reporter.
SECTION.
832. Causes not disposed of to stand continued.
833. Judges shall not practice law.
834. Seal of supreme court.
835. Clerk of supreme court—Oath and bond.
836. Deputy clerk—Appointment and oath.
837. Appointment of deputy to be entered on record.
838. Clerk liable for acts of deputy.

Terms of supreme court.

SEC. 823. The supreme court shall meet annually at the capital on the third Monday of January in each year. [S. L. 1884, ch. 32, §2.]

Adjournments.

SEC. 824. If there shall not be a quorum of the justices of the supreme court present on the first day of any term, the court shall stand adjourned from day to day until a quorum shall attend, and the said court may, there being a quorum present, adjourn from time to time, to any time deemed proper. [S. L. 1884, ch. 90, §2.]

Transaction of business at adjourned terms.

SEC. 825. It shall be lawful to mature causes to such adjourned time or times, the same as to the beginning of the general term of said supreme court, and it shall be competent for said supreme court to hear and determine causes at any such adjourned time or times the same as though heard and determined at the first session of each supreme court and as though such causes were on the calendar at the commencement of the general term. [C. L. 1884, ch. 90, § 3.]

Rules of practice and forms of process.

SEC. 826. It shall be the duty of the supreme court, at its first session, to prescribe rules of practice for said court, and for the district courts of this territory not inconsistent with the organic act or laws of this territory, and when the said rules are promulgated, they shall be as binding upon the several courts, and the parties practicing and having business therein, as though the same were enactments of the legislative authority of this territory. The supreme court may prescribe forms of process to be used, and the regulations for the keeping of the records and proceedings of the court. [C. L. 1876, ch. 106, § 4.]

Process, how tested and executed.

SEC. 827. All process issued out of the supreme court shall bear test in the name of the chief justice, and be signed by the clerk of the court, sealed with its seal and made returnable according to law, or the rules and orders of the court, and shall be executed by the officer to whom the same is directed. [C. L. 1876, ch. 106, § 5.]

Opinions to be in writing.

SEC. 828. The opinion of the justices of the supreme court on any matter pending before it, shall be given in writing and filed with the papers in the case, and when the justices are divided in opinion in any case, the fact of division shall be stated in the final order, and the dissenting justice may file his dissenting opinion, if he so wish. [C. L. 1876, ch. 106, § 6.]

Synopsis of opinions to be published.

SEC. 829. It shall be the duty of the clerk of the supreme court, under the supervision of the chief justice or one of the associate justices, in case of the absence of the chief justice, to make a synopsis or syllabus of the different decisions at the end of each term, whether general or adjourned, and cause the same to be published in some newspaper published at the capital. [C. L. 1876, ch. 106, § 7.]

When reporter to be appointed.

SEC. 830. When the number of cases decided in said court shall reach one hundred, it shall be competent for the supreme court to appoint a reporter of its decisions, who shall receive such compensation as shall therefor be prescribed by law. [C. L. 1876, ch. 106, § 8.]

Filling vacancy in office of reporter.

SEC. 831. Whenever any vacancy shall occur in the office of reporter of the supreme court it shall be the duty of said supreme court to appoint a person learned in the law to fill the vacancy thus created. [S. L. 1879, ch. 75, § 1.]

Causes not disposed of to stand continued.

SEC. 832. All matters, suits and causes undisposed of at any term of supreme court, shall stand continued to the next succeeding adjourned or regular term. [C. L. 1876, ch. 106, § 9.]

Judges shall not practice law.

SEC. 833. No justice of the supreme court shall practice as an attorney in any of the courts of this territory, nor give advice touching any cause pending, or to be brought therein. [C. L. 1876, ch. 106, § 10.]

Seal of supreme court.

SEC. 834. The seal of the supreme court shall be that of the Territory of Wyoming, substituting the words supreme court, Wyoming Territory, around the vignette of said seal. [C. L. 1876, ch. 106, § 11.]

Clerk of supreme court—Oath and bond.

SEC. 835. The supreme clerk shall appoint a clerk thereof, who shall take an oath, before one of the justices of said court, to support the constitution of the United States, the organic act of the Territory of Wyoming, and faithfully discharge the duties pertaining to the office, and shall give a bond to the Territory of Wyoming in such sum as shall be prescribed by the court, which bond shall be for the faithful accounting for all moneys that shall come into his hands as clerk, and for the faithful discharge of his duty, and shall be approved by the chief justice, and filed with the auditor of the territory. [C. L. 1876, ch. 106, § 12.]

See U. S. Rev. Stat., § 1870.

Deputy clerk Appointment and oath.

SEC. 836. The clerk of the supreme court may, by and with the consent of the judges of the supreme court, or a majority thereof, appoint a deputy clerk, who shall reside where the supreme court is held. The deputy shall take and subscribe a like oath of office with his principal, and may perform all the duties of said office in the name of his principal, and the attestation of said deputy to all decrees, orders and processes, shall have the same effect and force as if issued by his principal. [S. L. 1886, ch. 11, § 1.]

Appointment of deputy to be entered on record.

SEC. 837. Said appointment shall be entered on the records of said supreme court, and shall hold good until revoked, and both appointment and revocation may be made as well in vacation as in term time. [S. L. 1886, ch. 11, § 2.]

Clerks liable for acts of deputy.

SEC. 838. The clerk of the supreme court shall be liable on his official bond for all the acts of his deputy as clerk. [S. L. 1886, ch. 11, § 3.]

CHAPTER 2.

DISTRICT COURTS.

SECTION.
839. Judicial districts defined.
840. Assignment of judges.
841. Terms of court in first and second districts.
842. Term of court in third district.
843. Special terms of district court.
844. Temporary assignments of judges by governor.
845. Adjournments by clerk in absence of judge.
846. When judge may act in other district.
SECTION.
847. Appointment of deputy clerks.
348. Several deputies may be appointed in county where clerk resides.
849. Appointment to be entered on record.
850. Bonds of clerks and deputies.
851. How bonds taken and filed.
852. Certified copy of bond as evidence.
853. Action upon bond.

Judicial districts defined.

SEC. 839. The Territory of Wyoming is hereby divided into the following judicial districts, to-wit: The Counties of Laramie and Crook shall compose the first judicial district. The Counties of Albany and Johnson shall compose the second judicial district. The Counties of Carbon, Fremont, Sweetwater and Uinta shall compose the third judicial district. [S. L. 1882, ch. 61, § 1. S. L. 1886, ch. 54, § 1; ch. 100, § 1.]

Assignment of judges.

SEC. 840. The Hon. John W. Lacey, chief justice of the supreme court and his successors in said office are hereby assigned to the first judicial district, Hon. Jacob B. Blair, associate justice of the supreme court and his successors in office are hereby assigned to the second judicial district, and the Hon. Samuel C. Parks, associate judge of the supreme court and his successors in office are hereby assigned to the third judicial district. [S. L. 1882, ch. 61, § 2.]

Terms of court in first and second districts.

SEC. 841. The terms of the district courts in the Counties of Laramie, Crook, Albany and Johnson, shall be held as follows to-wit: In the first judicial district at the county seat of Laramie County, two general terms in each year, beginning on the fourth Monday of May and the second Monday of November, and there shall be one term of the district court held each year in the County of Crook, beginning on the first Tuesday in the month of August. In the second judicial district two general terms in each year, beginning on the second Monday of March and the second Monday of October at the county seat of Albany County; at the county seat of Johnson County two general terms in each year, beginning on the fourth Monday in June and the second Monday in December. [S. L. 1884, ch. 32, § 1. S. L. 1886, ch. 54, § 1.]

Terms of court in third district.

SEC. 842. There shall be held in the third judicial district terms of court as follows: At the county seat of Uinta County, two general terms in each year, beginning on the first Monday of April and the first Monday in September; at the county seat of Sweetwater County, two general terms in each year, beginning on the fourth Monday of April and the fourth Monday of September, and at the county seat of Carbon County, two general terms in each year, beginning on the second Monday of May and the second Monday of October, and there shall be held in each year one regular term of the district court at the county seat of Fremont County, beginning on the first Monday in the month of July. [S. L. 1884, ch. 31, § 1. S. L. 1886, ch. 100, § 1.]

Special terms of district court.

SEC. 843. It shall be competent for the district court, upon the written request of a majority of the board of county commissioners, of the proper county, at any regular term thereof, or any judge thereof in vacation, to order a special term of the district court, by giving thirty days notice in some newspaper published in the county, if there be one, if not in some newspaper having a general circulation in such county; and where such notice shall be given in pursuance of this chapter the court shall have the same powers as the court at a general term. [C. L. 1876, ch. 67, § 3.]

Temporary assignments of judges by governor.

SEC. 844. In case the judge of any district shall be unable, from any cause, to dispatch the business of his district, it shall be lawful for the governor to assign the judge of any other district to act in his stead, until such disability is removed, and the judge so assigned shall have the same powers and shall discharge the same duties while acting, as the judge duly assigned by law; *Provided*, That unless specially assigned for that purpose by the governor, as above provided, no judge shall have power to act in any district except the one to which he shall have been assigned by the act of the legislature of this territory, except on applications for the writ of *habeas corpus*, or applications for the writ of "proceedings in error." [C. L. 1876, ch. 67, § 4.]

Adjournments by clerk in absence of judge.

SEC. 845. If from any cause the judge of any district shall fail to reach the place appointed for holding any term of the district court, by two o'clock in the afternoon of that day, it shall be lawful for the clerk of said court, to adjourn said court from day to day for three days, and on the third day to adjourn the term, unless he shall have reasonable cause to believe that by further adjournment, not later than the following Monday, the justice assigned to hold said term will be present. In all such cases the said clerk shall enter such continuance in the records of the court, and all jurors and witnesses, and recognized persons in attendance, or who should have been in attendance, shall take notice of all adjournments, and in nowise be released from liability that they may be under at the time of such adjournments, and all proceedings, actions, motions and orders, shall be deemed adjourned from day to day, or for the term, and no adjournment shall work a release or discharge of any recognized persons. [C. L. 1876, ch. 67, § 5.]

When judge may act in other district.

SEC. 846. If any judge, duly assigned by law to any judicial district in this territory, shall be unable from any cause to attend any term of any court in his judicial district, or be prevented for any reason from holding such term, or any part thereof, or be so situated in respect to any cause pending in such court as in his opinion to make it improper for him to try, or in any manner dispose of it, the judge of any other judicial district in this territory may hold such court, either for the whole term or any part thereof. [S. L. 1884, ch. 30, § 1.]

Appointment of deputy clerks.

SEC. 847. The clerk of the district court in each district in which there are two or more counties, shall appoint a deputy in each county in his district wherein a court is required by law to be held, the judge of the district approving such appointment; and every such deputy shall have power to execute the duties of the clerk within the county for which he is appointed, but all his official acts shall be in the name of the clerk, by his appointee as deputy, and the clerk shall be liable for all acts of such deputy done under color of his appointment, and in no case shall the clerk or his deputy remove the records from the county seat of the county in which the court is held, or permit the same to be done. [C. L. 1876, ch. 67, § 6.]

Several deputies may be appointed in county where clerk resides.

SEC. 848. The clerks of the several district courts in this territory shall have authority by and with the consent of the judges thereof to appoint one or more deputy clerks for the county wherein they respectively may reside, who shall take and subscribe a like oath of office with their principals, and may perform all the duties of said office in the name of their principals; and their subscription as such deputies to all decrees, orders and processes shall have the same force and effect as if issued by their principals. Every deputy clerk shall, when his residence or office is remote from the county seat, keep a seal of office of like form and design as the seal kept by his principal, and whenever his term of office expires or is terminated from any cause, he shall return such seal to his principal. [S. L. 1882, ch. 15, § 1. S. L. 1886, ch. 63, § 1.]

Appointment to be entered on record.

SEC. 849. Said appointment shall be entered on the records of said district court and shall hold good until revoked; and both appointment and revocation may be made as well in vacation as in term time. [S. L. 1882, ch. 15, § 2.]

Bonds of clerks and deputies.

SEC. 850. Every clerk of a district court in this territory, and every deputy clerk appointed by said clerk in pursuance of law, whether said clerk or deputy be heretofore appointed or shall hereafter be appointed, shall give a bond to the Territory of Wyoming in the sum of five thousand dollars, which bond shall be for the faithful accounting for all moneys which shall come into his hands as such clerk or deputy clerk, as the case may be, and shall be held and meant to include under the sections of this chapter his actings and doings as *ex-officio* register in chancery or deputy *ex-officio* register in chancery, as the case may be, and for the faithful discharge of the duties of the office of clerk or deputy clerk, as the case may be. [S. L. 1882, ch. 14, § 1.]

How bonds taken and filed.

SEC. 851. The bond required by the preceding section shall be taken in term time and entered at large on the court journal at the term next after their appointment, and shall in all cases be approved by the presiding judge and shall be by him filed with the territorial auditor. [S. L. 1882, ch. 14, § 2.]

Certified copy of bond as evidence.

SEC. 852. A certified copy of such bond made by the territorial auditor of this territory, under the seal of his office, shall be *prima facie* evidence of the contents thereof in all courts and places within this territory. [S. L. 1882, ch. 14, § 3.]

Action upon bond.

SEC. 853. The bonds executed by the clerks and their deputies in pursuance of this chapter may be sued upon in the name of the Territory of Wyoming, to the use of any person or persons or any body politic or corporate injured by their breach, in the district court for the county where said bond shall be executed. [S. L. 1882, ch. 14, § 4.]

TITLE 10. CRIMES.

CHAPTER 1. GENERAL PROVISIONS.
CHAPTER 2. OFFENSES AGAINST THE PERSON.
CHAPTER 3. OFFENSES AGAINST PROPERTY.
CHAPTER 4. FORGERY AND COUNTERFEITING.
CHAPTER 5. OFFENSES AGAINST PUBLIC JUSTICE.
CHAPTER 6. OFFENSES AGAINST PUBLIC PEACE.
CHAPTER 7. OFFENSES AGAINST PUBLIC MORALITY, HEALTH AND POLICE.
CHAPTER 8. OFFENSES BY CHEATS, SWINDLERS AND OTHERS.
CHAPTER 9. MALICIOUS MISCHIEF.
CHAPTER 10. OFFENSES AGAINST PUBLIC POLICY.
CHAPTER 11. REWARDS FOR THE APPREHENSION OF CRIMINALS.

CHAPTER 1.

GENERAL PROVISIONS.

SECTION.
854. Definition of crime.
855. Intention, how manifested.
856. Who considered of sound mind.
857. nfant under ten years cannot commit crime.
858. Lunacy and insanity as affecting guilt.
859. Idiots cannot commit crime.
860. Advising an irresponsible person to commit an offense.
861. Married woman acting under threats of husband.
SECTION.
862. Drunkenness not an excuse for crime.
863. Misfortune and accident as affecting guilt.
864. Offenses committed through intimidation.
865. No trial had during lunacy or insanity of defendant.
866. Felonies and misdemeanors defined.
867. Attempts to commit crime.
868. Accessories.
869. Accessories after the fact.

Definition of crime.

SEC. 854. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. [C. L. 1876, ch. 35, § 1.]

Intention, how manifested.

SEC. 855. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused. [C. L. 1876, ch. 35, § 2.]

Who considered of sound mind.

SEC. 856. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil. [C. L. 1876, ch. 35, § 3.]

Infant under ten years cannot commit crime.

SEC. 857. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor. [C. L. 1876, ch. 35, § 4.]

Lunacy and insanity as affecting guilt.

SEC. 858. A lunatic or insane person without lucid intervals, shall not be found guilty of any crime or misdemeanor, with which he may be charged; *Provided*, The act so charged as criminal shall have been committed in the condition of insanity. [C. L. 1876, ch. 35, § 5.]

Idiots cannot commit crime.

SEC. 859. An idiot shall not be found guilty, or punished for any crime or misdemeanor with which he or she may be charged. [C. L. 1876, ch. 35, § 6.]

Advising an irresponsible person to commit an offense.

SEC. 860. Any person counseling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offense, shall be prosecuted for such offense when committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging as aforesaid, had he or she committed the offense directly, without the intervention of such infant, lunatic or idiot. [C. L. 1876, ch. 35, § 7.]

Married woman acting under threats of husband.

SEC. 861. A married woman acting under the threats, command or coercion of her husband shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appears from all the facts and circumstances of the case, that violent threats, command or coercions were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty. [C. L. 1876, ch. 35, § 8.]

Drunkenness not an excuse for crime.

SEC. 862. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they had been possessed of sound reason and discretion. Where a crime rests in intention, the inebriated condition of the defendant at the time of committing the offense may be proven to the jury, as being upon the question of intention. [C. L. 1876, ch. 35, § 9.]

Misfortune and accident as affecting guilt.

SEC. 863. Acts committed by misfortune or accident shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention or culpable negligence. [S. L. 1876, ch. 35, § 10.]

Offenses committed through intimidation.

SEC. 864. A person committing a crime or misdemeanor not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger or that he or she had reasonable cause to believe, and did believe, that his or her life or member was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces, the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense. [C. L. 1876, ch. 35, § 11.]

No trial had during the lunacy or insanity of defendant.

SEC. 865. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If after verdict of guilty and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impaneling insane or lunatic. [C. L. 1876, ch. 35, § 12.]

Felonies and misdemeanors defined.

Sec. 866. Crimes which may be punished with death or imprisonment in the penitentiary, shall be denominated felonies; and all other offenses against the criminal law of this territory shall be denominated misdemeanors. [C. L. 1876, ch. 16, § 1.]

Attempts to commit crime.

Sec. 867. Every person who shall attempt to commit a crime or offense prohibited either by the common law or by statute, and in such attempt shall do any act towards the commission of such crime or offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one hundred dollars and costs of suit, or imprisoned in the county jail for a term not exceeding six months; or by both such fine and imprisonment in the discretion of the court; *Provided*, That in no case shall the punishment for the attempt to commit an offense be greater than the punishment for committing the substantive offense; *Provided*, *further*, That this section shall not apply to cases where the attempt to commit crimes or offenses, are defined, and the penalties thereof are fixed by law. [S. L. 1884, ch. 60, § 1.]

Accessories.

Sec. 868. An accessory is he or she who stands by and aids, abets or assists, or who, not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly. [S. L. 1876, ch. 35, § 13.]

Accessories after the fact.

Sec. 869. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term, not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case, and the enormity of the crime. [C. L. 1876, ch. 35, § 14.]

CHAPTER 2.

OFFENSES AGAINST THE PERSON.

SECTION.
870. Murder in first degree.
871. Murder in second degree.
872. Manslaughter.
873. Manslaughter.
874. Manslaughter.
875. Homicide, when excusable.
876. Duelling where party dies.
877. Challenge to fight duel.
878. Carrying challenge—Assisting at duel—Indictment.
879. Poisoning—Abortion.
880. Woman attempting to procure abortion.
881. Mayhem.
882. Rape.
883. Not necessary to prove emission.
SECTION.
884. Crime against nature.
885. Assault.
886. Assault with intent to commit murder, etc.
887. Assault and battery.
888. Aggravated assault and battery.
889. False imprisonment.
890. Kidnaping.
891. Punishment for kidnaping.
892. Robbery.
893. Robbery.
894. Blackmailing.
895. Sending threatening letters.
896. Sending threatening letters—Soliciting chastity of female.

Murder in first degree.

Sec. 870. Every murder which shall be perpetrated by means of poison, or lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate, any rape, arson, robbery or burglary, shall be deemed murder in the first degree, and upon conviction thereof, the perpetrator shall suffer death by hanging by the neck. [S. L. 1884, ch. 34, § 1.]

Murder in second degree.

Sec. 871. Any person who shall purposely and maliciously, but without deliberation and premeditation, kill another, such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, or territorial prison, and kept at hard labor during life. [C. L. 1876, ch. 35, § 16.]

Manslaughter.

Sec. 872. If any person shall unlawfully kill another without malice, either upon a sudden quarrel or unintentionally, while the slayer is in the commission of some unlawful act, every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor not more than ten years, nor less than one year, and the length of time between one and ten years, for which the defendant may be imprisoned, shall be fixed by the court. [C. L. 1876, ch. 35, § 18. S. L. 1882, ch. 82.]

Manslaughter.

Sec. 873. If any person shall unlawfully kill another in the heat of passion, by means of a dangerous weapon, or in a cruel and inhuman manner, every such person shall he deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor not more than ten years, nor less than one. [C. L. 1876, ch. 35, § 19. S. L. 1882, ch. 82.]

Manslaughter.

Sec. 874. If any person shall unlawfully kill another, without malice, either upon a sudden quarrel, or unintentionally or by any culpable neglect, or criminal carelessness, every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the penitentiary of the territory not more than four years, nor less than one year. [C. L. 1876, ch. 35, § 20. S. L. 1882, ch. 82.]

Homicide, when excusable.

Sec. 875. *Homicide* is excusable in the following cases:

First—When committed by accident and misfortune, in doing any lawful act, by lawful means with usual and ordinary caution, and without any unlawful intent;

Second—When committed by accident or misfortune in the heat of passion upon any sudden and sufficient provocation, or upon a sudden combat; *Provided*, That no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner;

Third—When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon, or in, any dwelling house in which such person is;

Fourth—When committed in the lawful defense of such person, or his or her husband, wife, parent, brother or sister, child, master, mistress or servant, when there is a reasonable ground to apprehend a design to commit a felony or to do some great bodily or personal injury, and there is imminent danger of such design being accomplished;

Fifth—When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace. [C. L. 1876, ch. 35, § 21.]

Dueling where party dies.

Sec. 876. If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof, within a year and a day thereafter, any such offender, his second, as well as the second of the person killed, and all aiders, abettors and counselors, being thereof duly convicted, shall be considered to have committed a felony, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years nor less than one year. [C. L. 1876, ch. 16, § 1; ch. 35, § 22.]

Challenge to fight duel.

Sec. 877. If any person shall hereafter challenge another to fight a duel with any deadly weapon or in any manner whatever, the probable issue of which might result in the death of either, or if any person shall accept a challenge or agree to fight a duel; any person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this territory and be fined in a sum not exceeding five hundred dollars. [C. L. 1876, ch. 35, § 23.]

Carrying challenge--Assisting at duel—Indictment.

Sec. 878. If any person shall willingly or knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors or counsellors, or against any person for sending or accepting a challenge or for carrying any challenge or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument or weapon with which the duel shall be fought, or intended to be fought, so that it be alleged in the indictment, that the engine, weapon or instrument was deadly, the probable consequence of fighting with which might be the death of either of the parties. [C. L. 1876, ch. 35, § 24.]

Poisoning—Abortion.

Sec. 879. Any person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance, or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than ten years. Every person who, with the intent to procure the miscarriage or abortion of any pregnant woman, or woman supposed by such person to be pregnant, unless the same be necessary to preserve her life, shall administer to her, advise or prescribe for her, or cause to be taken by her any poison, drug or medicine or other noxious drug, or shall use any instrument or other means whatever, or shall aid, assist or counsel any person so intending to procure or have procured a miscarriage or abortion, whether said miscarriage or abortion be accomplished or not, shall be guilty of a felony, and upon conviction thereof shall be fined not more than eight hundred dollars and be imprisoned for a term not exceeding five years nor less than one year, in the penitentiary; and if any woman, by reason of such treatment shall die, the person, or persons, administering, or causing to be administered such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid shall be deemed guilty of manslaughter, and if convicted, be punished by imprisonment for a term not less than three years in the penitentiary, and fined in a sum not exceeding one thousand dollars, unless it appear that such miscarriage was procured or attempted by, or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her. [C. L. 1876, ch. 35, § 25. S. L. 1884, ch. 1, § 2.]

Woman attempting to procure abortion.

SEC. 880. If any woman shall endeavor privately, either by herself or the procurement of others, to cause the death of any issue of her body, male or female, which, if born alive, would be illegitimate, so that it may not come to light, whether it shall have been murdered or not; every such mother being convicted thereof, shall suffer imprisonment in the county jail for a term not exceeding one year; *Provided*, *however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such illegitimate child. [S. L. 1876, ch. 35, § 26.]

Mayhem.

SEC. 881. Mayhem consists in the unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and purposely put out an eye or eyes, any such person shall be guilty of mayhem, and on conviction shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than twenty years; *Provided*, That no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases, where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a high misdemeanor, and punished by imprisonment in the penitentiary, not exceeding one year, and be fined not exceeding one thousand dollars. [C. L. 1876, ch. 35, § 26. S. L. 1882, ch. 36, § 1.]

Rape.

SEC. 882. Rape is the carnal knowledge of a female, forcibly and against her will. Any male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child, under the age of fourteen years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape shall be punished by confinement in the penitentiary, for a term not less than one year, and such imprisonment may extend to life. [C. L. 1876, ch. 35, § 27. S. L. 1882, ch. 38, § 1.]

Not necessary to prove emission.

SEC. 883. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature. [C. L. 1876, ch. 35, § 28.]

Crime against nature.

SEC. 884. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and such imprisonment may extend to life. [C. L. 1876, ch. 35, § 29.]

Assault.

SEC. 885. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another, and every person who shall perpetrate an assault, shall, on conviction, be fined in any sum not exceeding fifty dollars, to which may be added imprisonment in the county jail not exceeding thirty days. [C. L. 1876, ch. 86, § 1.]

Assault with attempt to commit murder, etc.

SEC. 886. An assault with an attempt to commit murder, manslaughter, rape, mayhem, robbery or larceny shall subject the offender to a confinement in the penitentiary for a term not less than one year nor more than fourteen years. An assault with a deadly weapon, instrument or other thing with an intent to inflict upon the person of another a bodily injury where no considerable provocation appears or where the circumstances of the assault show an abandoned and malignant heart shall be adjudged to be a high misdemeanor, and any person duly convicted thereof shall be fined in a sum not exceeding two thousand dollars, or imprisoned not exceeding one year in the county jail, or by both such fine and imprisonment. [S. L. 1882, ch. 37, § 1.]

Assault and battery.

SEC. 887. Assault and battery is the unlawful beating of another. Every person found guilty of an assault and battery shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [C. L. 1876, ch. 35, § 32; ch. 86, § 2.]

Aggravated assault and battery.

SEC. 888. If any person shall unlawfully and maliciously inflict upon another person, either with or without any weapon or instrument, any grievous bodily harm, or shall unlawfully and maliciously cut, stab or wound any other person, every such person so offending shall be guilty of a high misdemeanor, and upon being convicted thereof, shall be fined in a sum not exceeding two thousand dollars, or be imprisoned not exceeding one year in the county jail, or by both fine and imprisonment, in the discretion of the court. [S. L. 1884, ch. 8, § 1.]

False imprisonment.

SEC. 889. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority; any person convicted of false imprisonment shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail. [C. L. 1876, ch. 35, § 33.]

Kidnaping.

SEC. 890. Kidnaping is the forcible abduction or stealing away of a man, woman or child from his or her own county, and sending or taking him or her into another. [C. L. 1876, ch. 35, § 34.]

Punishment for kidnaping.

SEC. 891. Every person who shall forcibly steal, take or arrest any man, woman or child, whether white, black or colored, in this territory, and carry him or her into another county, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, shall upon conviction, be deemed guilty of kidnaping. Every person found guilty of kidnaping shall be confined in the penitentiary for a term not less than one year, and not more than seven years for each person kidnaped or attempted to be kidnaped. [C. L. 1876, ch. 35, § 35.]

Robbery.

SEC. 892. Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery, shall be punished by confinement in the penitentiary for a term not less than three years nor more than fourteen years. [C. L. 1876, ch. 35, § 39.]

Robbery.

SEC. 893. If any person shall forcibly and by violence, or by putting in fear, take from the person of another any money, or personal property, of any value whatever, with intent to rob or steal, every person so offending shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned in the penitentiary, or territorial prison, and kept at hard labor not more than fifteen, nor less than three years. [C. L. 1876, ch. 35, § 40.]

Blackmailing.

Sec. 894. If one person shall accuse another of a crime, with a view and intent to extort from such person any money, property or valuable thing, and shall by intimidating such person by such accusation or threat, extort from such person any money, property or valuable thing, the person so offending shall be deemed guilty of a felony, and being thereof convicted, shall pay a fine not exceeding one thousand dollars, and be imprisoned in the penitentiary, or territorial prison not more than seven, nor less than one year. [C. L. 1876, ch. 35, § 41.]

Sending threatening letters.

Sec. 895. If any person shall knowingly send or deliver any letter or writing threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels or other valuable things, or threatening to maim, wound, kill or murder, or to burn his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable things be demanded, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months, [C. L. 1876, ch. 35, § 97.]

Sending threatening letters—Soliciting chastity of female.

Sec. 896. If any person shall knowingly send or deliver, or cause to be sent or delivered, any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, containing wilful and malicious threats of injury of any kind whatever, or with intent or for the purpose of extorting money or other valuable things from any person; or with the intent and for the purpose of insulting and grossly offending any person; or with the intent and for the purpose of soliciting the chastity of any girl or woman of good character and reputation, every person so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars or imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court. [S. L. 1884, ch. 60, § 244.]

CHAPTER 3.

OFFENSES AGAINST PROPERTY.

SECTION.
897. Arson.
898. Attempt to commit arson.
899. Burglary.
900. House breaking.
901. Larceny.
902. Bringing stolen property into territory.
903. Grand and petit larceny defined.
904. Penalty for petit larceny.
905. Buying or receiving stolen goods.
906. Stolen property to be restored.
907. Altering marks and brands.
908. Stealing, embezzling, etc., by public officers and servants.
909. Refusal to pay over money, etc., by officers and others.

SECTION.
910. Embezzlement by officers.
911. Embezzlement by carrier.
912. Embezzlement by clerk, agent or servant.
913. Allegation and proof of money in embezzlement.
914. Destruction of deeds and other writings.
915. Removal of land-marks.
916. Embezzlement declared to be larceny.
917. Larceny by bailee.
918. Larceny by lodger.
919. Displacing railroad signals, etc.
920. Firing woods or prairie.
921. Civil remedy for damages in such case.
922. Exceptions to operation of last two sections.

Arson.

Sec. 897. Every person who shall wilfully and maliciously burn or cause to be burned, any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, factory, mill, pottery or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail, or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars erected across any of the waters of this territory, such persons so offending shall be deemed guilty of arson, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than ten years; and should the life or lives of any person be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly. [C. L. 1876, ch. 35, § 36.]

Attempt to commit arson.

SEC. 898. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with the intent to burn or destroy the same, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding one thousand dollars. [C. L. 1876, ch. 16, § 1; ch. 35, § 37.]

Burglary.

SEC. 899. Every person who shall, wilfully and maliciously, and forcibly break and enter, or wilfully and maliciously without force (the door or any window being open) enter into any dwelling house, kitchen, office, shop, storehouse, warehouse, malt house, stilling house, banking house, hotel, saloon, mill pottery, factory, water craft, church or meeting house, railroad car, or any other close inclosure, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony; or who, being lawfully within any room or apartment of any of the buildings aforesaid, shall, with like intent, either with or without force, enter into any other room or apartment of the same building, shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years. [C. L. 1876, ch. 35, § 38.]

Housebreaking.

SEC. 900. Every person who shall wilfully, maliciously and forcibly break and enter, or wilfully and maliciously without force, enter into any dwelling house, kitchen, office, store house, warehouse, malt house, stilling house, banking house, hotel, saloon, mill, pottery, factory, water craft, church or meeting house, railroad car, or any other close enclosure with intent to commit a misdemeanor, or to injure or destroy the property of another, or make any insolent demand for food or other thing, or in any way disturb the peace of the occupant or occupants of such above described places, premises or enclosures, shall be deemed guilty of house-breaking, and upon conviction thereof, shall be fined in a sum not more than one hundred dollars and confined in the county jail for a term not exceeding six months. [S. L. 1879, ch. 29, § 1.]

Larceny.

SEC. 901. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny shall be punished by confinement in the penitentiary for a term not less than one year, nor more than ten years. [C. L. 1876, ch. 35, § 42.]

Bringing stolen property into territory.

SEC. 902. Every person who shall be found guilty of larceny, as defined in the preceding section, in any state or territory of the United States, outside the Territory of Wyoming, and shall bring into any county of this territory the property stolen, which property shall be of the value of thirty dollars, in the county into which it is brought, shall be deemed guilty of grand larceny, the same as if the original taking was in said county, and punished accordingly. [S. L. 1879, ch. 30, § 1.]

Grand and petit larceny defined.

SEC. 903. When the property taken is of the value of twenty-five dollars, or when taken from the person of another, of whatever value, or when taken from the sleeping apartment of another in the night time, of whatever value, shall be grand larceny. Larceny in other cases shall be petit larceny. [C. L. 1876, ch. 35, § 43.]

Penalty for petit larceny.

SEC. 904. Any person found guilty of petit larceny shall be punished by a fine not exceeding one hundred dollars, and imprisonment not exceeding three months, or both, in the discretion of the court. [C. L. 1876, ch. 117, § 2.]

Buying or receiving stolen goods.

SEC. 905. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years; and every such person may be tried, convicted and punished, as well before as after the trial of the principal. No person convicted of larceny, or of buying or receiving goods, or other things, obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or the value of the things stolen, bought or received, shall amount to five dollars. [C. L. 1876, ch. 35, § 45.]

Stolen property to be restored.

SEC. 906. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property; such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the same. [C. L. 1876, ch. 35, § 45.]

Altering marks and brands.

SEC 907. Every person who shall mark or brand, alter or deface the mark or brand of any horse, colt, mare, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with the intent thereby to steal the same, or to prevent identification thereof, by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than five years; *Provided*, That no person shall be condemned to the penitentiary under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offenses herein described, or by larceny, or by buying or receiving goods, or other property obtained by larceny, burglary or robbery, shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail for a term not exceeding six months, or fined not exceeding one hundred dollars. [C. L. 1876, ch. 35, § 46.]

Stealing, embezzling, etc., by public officers and servants.

SEC. 908. Every servant, officer or person employed in any public department, station or office of the government in this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take, carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property of whatever description it may be, being the property of said territory, county or corporate body, shall, on conviction, be punished by confinement in the penitentiary for a term not less than one year, nor more than two years. [C. L. 1876, ch. 35, § 46.]

Refusal to pay over money, etc., by officers.

SEC. 909. If any officer or person who now is or hereafter may be entrusted by law to collect, disburse, receive or safely keep any money or moneys, revenue or revenues belonging to this territory, to the school fund of this territory, to the school fund of any county or township, to any county in this territory, to any canal, turnpike or railroad fund of this territory or any county thereof, or to any fund for the improvement of any public road, river, creek or other water course bordering on or within this territory, or to any other fund now in being, or hereafter to be established by law for public purposes, shall fail or refuse to pay over all moneys, warrants, bills, notes and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this territory, or to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year nor more than ten years; *Provided*, That no person shall be committed to the penitentiary under this section unless the money not paid over shall amount to one hundred dollars, or it appears that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory. [C. L. 1876, ch. 35, § 47.]

Embezzlement by officers.

SEC. 910. If any officer of public trust in this territory, whether elected or appointed, or any officer or director of any incorporated bank or private banking person or firm or of any incorporated company, embezzle or fraudulently convert to his own use bullion, money, bank notes or any security for money, or any effects or property of another person, which shall have come into his possession or been placed under his care or management by virtue of his office, place or employment, he shall be deemed guilty of grand larceny, if the value thereof be the sum of twenty-five dollars and be punished accordingly. [S. L. 1882, ch. 44, § 1.]

Embezzlement by carrier.

SEC. 911. If any carrier or any person to whom money or any property which may be the subject of larceny may be delivered to be carried for him, or any person who may be entrusted with any such property, embezzle or fraudulently convert to his own use or secrete with intent to do so, any such property either in mass or otherwise before delivery thereof, at the place at which, or to the person to whom such property was to be delivered, he shall if the value be of the sum of twenty-five dollars be guilty of grand larceny and punished accordingly. [S. L. 1882, ch. 44, § 2.]

Embezzlement by clerk, agent or servant.

SEC. 912. If any clerk, agent, or servant of any private person or persons or of a co-partnership, shall embezzle or fraudulently dispose of or convert to his own use, or shall take or secrete with intent to embezzle and convert to his own use, without consent of his employer or master any money, or security for money, or any property of another which shall come to his possession, or shall be under his charge by virtue of such office or employment, he shall be deemed by so doing to have committed the crime of grand larceny when the amount of such money or property shall be of the value of twenty-five dollars, and be punished accordingly. [S. L. 1882, ch. 44, § 3.]

Allegation and proof of money in embezzlement.

SEC. 913. In a prosecution against a person accused of embezzling or fraudulently converting to his own use bullion, money, bank notes or any security for money, it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money, without specifying any particular money, gold, silver, notes or security, and such allegation, so far as it regards the description of the property shall be sustained, if the accused be proved to have embezzled any bullion, money, bank notes or any security for money, although the particular species be not proved. [S. L. 1882, ch. 44, § 4.]

Destruction of deeds and other writings.

SEC. 914. Every person who shall fraudulently or maliciously tear, burn, efface, cut or in any other way, destroy any deed, lease, bond, will, or any other writing, sealed bank-bill, or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this territory, or the United States, or any of them, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand, or any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day book or other book of account, or any agreement or contract whatsoever, with the intent to defraud, prejudice or injure any person or body corporate, shall upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than five years. [C. L. 1876, ch. 35, § 48.]

Removal of land-marks.

SEC. 915. Every person who shall knowingly, maliciously, fraudulently cut, fell, alter or remove any certain boundary tree, or other allowed land-mark, to the wrong of his neighbor, or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding three months. [C. L. 1876, ch. 35, § 49.]

Embezzlement declared to be larceny.

SEC. 916. If any clerk, apprentice or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels, shall be intrusted or be delivered, by his master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill or note, or goods or chattels, or any part thereof, with the intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed, by his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use with like purpose, every such person so offending shall be deemed guilty of larceny and punished accordingly. [C. L. 1876, ch. 35, § 50.]

Larceny by bailee.

SEC. 917. If any bailee by finding, or otherwise, of any money, bank bill, or note, or goods or chattels, shall convert the same to his or her own use with intent to steal the same, he shall be deemed guilty of larceny, in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly. [C. L. 1876, ch. 35, § 51.]

Larceny by lodger.

SEC. 918. If any lodger take away, with intent to steal, embezzle or purloin any bedding, furniture, goods or chattels, which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly. [C. L. 1876, ch. 35, § 52.]

Displacing railroad signal, etc.

Sec. 919. If any person shall wilfully and maliciously displace any switch, signal or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track, or railroad bridge, or any portion thereof, or shall place any obstruction whatever upon any such railroad track, or bridge, or switch, or shall place any false signal upon or in the vicinity of any railroad track, with intent that any person or property being or passing upon or over such railroad track or bridge should be injured, delayed or hindered, every such person so offending, shall be punished by imprisonment in the penitentiary not less than one year and not exceeding five years. And if, in consequence of any such act done, with the intent aforesaid, any person or property shall in fact be injured, every such person so offending, shall be punished by imprisonment in the penitentiary not less than three years and not exceeding ten years; or if, by reason of any such act done as aforesaid, with the intent aforesaid, any person is killed, or the life of any person is lost, every such person so offending shall be deemed guilty of murder. [C. L. 1876, ch. 35, § 53.]

Firing woods or prairie.

Sec. 920. If any person or persons shall wilfully or negligently set on fire any woods, prairies or other grass lands, such person or persons shall be deemed guilty of a crime, and shall upon conviction thereof, pay a sum not exceeding five hundred dollars each, nor less than one hundred dollars, and be imprisoned not more than six months nor less than thirty days; and said fine shall go to the school fund of the county in which said offense was committed. [S. L. 1879, ch. 87, § 1.]

Civil remedy for damages in such case.

Sec. 921. If any person or persons shall set on fire any woods, prairie or other grass lands, either wilfully or negligently, so as thereby to occasion damage to any other person or persons, such person or persons first named shall make satisfaction for such damages to the party injured, to be recovered in an action. [S. L. 1879, ch. 87, § 2.]

Exceptions to operation of last two sections.

Sec. 922. Nothing contained in the two preceding sections shall be so construed as to prevent any persons from firing against fires so as to protect property from being destroyed. Nor shall the said sections be construed to apply to any person who may in the months of March, April and October set fire to the grass land and sage brush upon his own land or upon the public land unclaimed or unoccupied, which fire he shall keep within proper control and prevent it from doing injury or damage to property of others; but should the property of others be injured by said setting on fire, it shall be *prima facie* evidence of negligence. [S. L. 1879, ch. 87, § 3.]

CHAPTER 4.

FORGERY AND COUNTERFEITING.

SECTION.

923. Forging public securities.
924. Forgery.
925. Counterfeiting or uttering counterfeit money.
926. Having or receiving counterfeit coin.
927. Having or receiving forged notes.
928. Having or receiving counterfeit gold dust, etc.
929. Debasing gold or other metals.
930. Impairing value of coin.
931. Passing fictitious bill, note or check.
932. Making apparatus for counterfeiting.
933. Proof of incorporation in cases of forgery.
934. Expert testimony.
935. Counterfeiting and defacing official seals and signatures.

Forging public securities.

Sec. 923. If any person or persons shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered any bond or coupon issued under any law of this territory, or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or shall have or keep in his possession, or conceal with intent to utter, publish or sell any such false, forged, counterfeited or altered bond or coupon with intent to deceive or defraud, or shall knowingly aid or assist in any of the acts aforesaid, every person so offending shall be deemed guilty of a felony, and on conviction shall be imprisoned in the territorial penitentiary for a term of not more than fifteen years, and not less than one year, and be punished by a fine not exceeding ten thousand dollars. [S. L. 1882, ch. 13, § 11.]

Forgery.

Sec. 924. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature, or any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond covenant, United States treasury note or United States bond, bank bill or note, post note, check or draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for property or money, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or any accountable receipt, or any order or warrant or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand, or other thing real or personal, or any transfer or assurance of money, moneys, stock, goods, chattels or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements or other estate real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, promissory note for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic, or corporate, whether the said person or persons, body politic or corporate reside in or belong to this territory or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed, as true and genuine; any of the above named false, altered, forged or counterfeited matters as above specified and described, knowing the same to be false, altered, forged or counterfeited matters as above specified and described, (knowing the same to be false, altered, forged or counterfeited,) with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not, every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years. [C. L. 1876, ch. 35, § 54.]

Counterfeiting or uttering counterfeit money.

Sec. 925. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment, or offer to pass or give in payment, such counterfeit coin, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years. [C. L. 1876, ch. 35, § 55.]

Having or receiving counterfeit coin.

Sec. 926. Every person who shall have in his or her possession or receive for any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this territory, with intent to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years. [C. L. 1876, ch. 35, § 56.]

Having or receiving forged notes.

SEC. 927. Every person who shall have in his or her possession, or shall receive from any other person any forged promissory note or notes, treasury notes, bond or bank bill or bills, for the payment of money with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this territory or not, knowing the same to be forged or counterfeited, or shall have or keep in his or her possession any blank or unfinished note, treasury note, bond or blank bill made in the form or similitude of any promissory note, treasury note, bond, draft, receipt or bill, for the payment of money, made to be issued by any incorporated bank or banking company in this territory or elsewhere, or by the government of the United States, with intent to fill up and complete such blank and unfinished note, treasury note, bond, draft, receipt or bill, or to permit, or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause or procure the same to be uttered or passed to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years. [C. L. 1876, ch. 35, § 57.]

Having or receiving counterfeit gold dust, etc.

SEC. 928. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin, or any counterfeit uncoined gold in bars or otherwise, or any counterfeit gold dust, now current, or that shall hereafter be current in this territory by law or usage, with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed with intent to defraud any person, body politic or corporate, knowing the same to be counterfeit, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not less than one year, and not more than fourteen years. [C. L. 1876, ch. 35, § 58.]

Debasing gold or other metals.

SEC. 929. Every person who shall mingle or procure to be mingled with any uncoined gold or gold dust now current, or which shall hereafter be current in this territory, any counterfeit gold dust, or counterfeit uncoined gold, or any base metal or substance whatever, with intent to utter or pass the same, or procure the same to be uttered or passed as gold dust or uncoined gold, shall, on conviction thereof, be punished by a fine not to exceed one thousand dollars, or by confinement in the penitentiary for a term not less than one year, nor more than fourteen years. [C. L. 1876, ch. 35, § 59.]

Impairing value of coin.

SEC. 930. Every person who, with intent to defraud, shall impair falsely, clip, scale, lighten or diminish any gold or silver coin now current, or that shall hereafter be, by law or usage in this territory, shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years. [C. L. 1876, ch. 35, § 60.]

Passing fictitious bill, note or check.

SEC. 931. Every person who shall make, pass, utter or publish, with intent to defraud any person or persons, body-politic or corporate, either in this territory or elsewhere, or with like intent, shall attempt to pass, utter or publish, or shall have in his or her possession, with like intent to pass, utter or publish any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument of writing, for the payment of money or property, of some bank, corporation, co-partnership or individual, when, in fact, there shall be no such bank, corporation, co-partnership or individual in existence, the said person knowing the bill, note, check or instrument of writing, for the payment of money or property, to be fictitious, shall be deemed guilty of the crime of forgery, and, on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years. [C. L. 1876, ch. 35, § 61.]

Making apparatus for counterfeiting.

SEC. 932. Every person who shall make or knowingly have in his possession any die or dies, plate or plates, or any apparatus, paper, metal, machine or other thing whatever, made use of in counterfeiting the coin now current, or hereafter to be current in this territory, or in counterfeiting bank notes, treasury notes, bonds or bills, whether such bank be situate in this territory or not, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machines, intended for the purposes aforesaid, shall be destroyed. [C. L. 1876, ch. 35, § 62.]

Proof of incorporation in cases of forgery.

SEC. 933. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation. [C. L. 1876, ch. 35, § 63.]

Expert testimony.

SEC. 934. Any person of skill may be a witness to prove that such bill or note is forged or counterfeited. [C. L. 1876, ch. 35, § 64.]

Counterfeiting and defacing official seals and signatures.

SEC. 935. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this territory, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody, any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years. [C. L. 1876, ch., 35, § 65.]

CHAPTER 5.

OFFENSES AGAINST PUBLIC JUSTICE.

SECTION.
936. Perjury
937. Perjured witness, when guilty of murder.
938. Indictment for perjury, sufficiency of.
939. Bribery of judicial and legislative officers.
940. Bribing officer to obtain appointment to office, etc.
941. Attempted bribery of officers.
942. Stealing public records, etc., by public officers.
943. Oppression of prisoner by jailor.
944. Unlawful retention of office.
945 Unauthorized acknowledgment of instrument.
946. Resisting or abusing public officer.
947. Resistance to law, *vi et armis*.
948. Obstruction public messengers.
949. Rescue of prisoner after conviction.
950. Rescue before conviction.
951. Procuring escape of convict.
952. Negligence of prison officials.
953. Conveying tools and weapons to convict.
SECTION.
954. Rescuing person held on civil process.
955. Assisting prisoner in attempt to escape.
956. Rescue of prisoner from custody of officer.
957. Suffering prisoner to escape before conviction.
958. Refusal to receive or arrest criminal.
959. Compounding criminal offense.
960. Conspiracy to procure indictment.
961. Unlawful exercise of office.
962. Embracery.
963. Common barratry.
964. Officious intermeddling in suits.
965. Extortion by public officer.
966. Malfeasance of public officer.
967. Emitting bills of credit.
968. Defacing public notices.
969. Officer buying territorial and county warrants.
970. Refusal to pay territorial and county warrants.

Perjury.

Sec. 936. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, as the case may be, and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year not more than fourteen years. [C. L. 1876, ch. 35, § 66.]

Perjured witness, when guilty of murder.

Sec. 937. Every person who by wilful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death. [C. L. 1876, ch. 35, § 67.]

Indictment for perjury, sufficiency of.

Sec. 938. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment, or averments, to falsify the matter, or matters, wherein the perjury is assigned, without setting forth any part of the records or proceedings either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed or the form of the oath or affirmation, or the manner of administering the same. [C. L. 1876, ch. 35, § 68.]

Bribery of judicial and legislative officers.

Sec. 939. If any person, or persons, shall directly, or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this territory, or to corrupt, induce or influence such judge or justice of the peace, to be more favorable to one side than to the other in any suit, matter or cause pending, or to be brought before him or them, or shall directly, or indirectly, give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward or other thing to obtain, procure or influence the vote of any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly to be more favorable to one side than to the other, on any question, election, matter or thing pending or to be brought before the legislative assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall, in any wise, accept or receive the same, shall be deemed guilty of bribery, and on conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years. [C. L. 1876, ch. 35, § 69.]

Bribery of officer to obtain appointment to office, etc.

SEC. 940. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general or prosecuting attorney, member of the legislative assembly or other officer, ministerial or judicial, (except such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required with partiality or favor or otherwise contrary to law, the person so giving and the officer so receiving any money, bribe, presents, reward, promise, contract, obligation or security, with intent, or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than five years. [C. L. 1876, ch. 35, § 70.]

Attempted bribery of officers.

SEC. 941. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, county or prosecuting attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, county or prosecuting attorney, or other ministerial or judicial officer who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding one thousand dollars. [C. L. 1876, ch. 35, § 71.]

Stealing public records, etc., by public officers.

SEC. 942. If any judge, justice of the peace, sheriff, coroner, clerk, recorder or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognizance or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book or any proceeding whatever, of or belonging to, any public office within this territory, the person so offending and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than seven years. [C. L. 1876, ch. 35, p. 72.]

Oppression of prisoner by jailor.

SEC. 943. Every jailor who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office. [C. L. 1876, ch. 35, § 73.]

Unlawful retention of office.

SEC. 944. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writing appertaining or belonging to his office, or mutilate, destroy or take away the same, the person so offending shall, on conviction, be punished by a fine not exceeding one thousand dollars. The provisions of this section shall apply to any person or persons who shall have records, documents, papers or other writings in his, her or their possession, and who shall wilfully mutilate, destroy, withhold or detain the same as aforesaid. [C. L. 1876, ch. 35, § 74.]

Unauthorized acknowledgment of instrument.

SEC. 945. If any person shall, without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail, or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for any term not less than one year nor more than ten years. [C. L. 1876, ch. 35, § 75.]

Resisting or abusing public officer.

SEC. 946. If any person shall knowingly and wilfully obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable or other officer of this territory, or other person duly authorized in serving, or attempting to serve, any lawful process or order of any court, judge or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy sheriff, coroner, constable or other officer, or person duly authorized in serving or executing, or attempting to serve or execute any process or order as aforesaid, or for having served or executed, or attempted to serve or execute the same, any person so offending shall be fined in a sum not exceeding five hundred dollars, and be imprisoned for a term not exceeding one year; *Provided*, Any officer or person whatever, that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment. [C. L. 1876, ch. 35, § 76.]

Resistance to law, vi et armis.

SEC. 947. If any person or persons shall in any wise aid, assist, engage in, co-operate or participate with, any armed force of men, with intent, by force of arms, to obstruct, retard or resist the execution of any law of this territory, or shall, with such armed force, invade any portion of this territory, any such person or person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned for a term not exceeding ten years. [C. L. 1876, ch. 35, § 77.]

Obstructing public messengers.

SEC. 948. If any person or persons shall wilfully and knowingly intercept, obstruct or oppose any messenger traveling in any part of this territory, and carrying orders or dispatches from the executive department of this territory, or shall in any manner oppose, resist, or in any manner obstruct any officers of the United States or of this territory, or any person or persons acting under the authority or by the direction of such officers while engaged in the discharge of any official duty, or shall, when called upon by any such officer, refuse or neglect to aid or assist such officer in arresting any person or persons, any such person or persons so offending, shall, on conviction, be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or both such fine and imprisonment. [C. L. 1876, ch. 35, § 78.]

Rescue of prisoner after conviction.

SEC. 949. If any person or persons shall set at liberty, or rescue any person, who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued. [C. L. 1876, ch. 35, § 79.]

Rescue before conviction.

SEC. 950. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable by confinement in the penitentiary, such person so offending, shall be, on conviction, fined in a sum not exceeding one thousand dollars and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty if he or she had been found guilty. [C. L. 1876, ch. 35, § 80.]

Procuring escape of convict.

SEC. 951. If the warden of the penitentiary or any servant, officer or agent belonging to, or in employment at the same, or any sheriff, deputy sheriff or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person, on conviction, shall be punished by confinement in said penitentiary for a term not less than one year, nor more than two years. [C. L. 1876, ch. 35, § 81.]

Negligence of prison officials.

SEC. 952. If the wardens of the penitentiary or other persons as aforesaid, shall negligently suffer any convict, committed or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to said convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by a fine not exceeding two hundred dollars. [C. L. 1876, ch. 35, § 82.]

Conveying tools and weapons to convict.

SEC. 953. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and imprisonment in the penitentiary not exceeding one year. [C. L. 1876, ch. 35, § 83. S. L. 1882, ch. 52, § 1.]

Rescuing person held on civil process.

SEC. 954. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall, on conviction be fined in any sum not exceeding the sum for which said civil process issued. [C. L. 1876, ch. 35, § 84.]

Assisting prisoner in attempt to escape.

SEC. 955. If any person shall aid or assist a prisoner lawfully committed or detained in any jail for any offense against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from the jail, though no escape be actually made, or if any person shall convey or cause to be delivered to any such prisoner any disguise, instruments or arms proper to facilitate the escape of such prisoner, any person so offending, although no escape or attempt to escape be actually made, shall on conviction be punished by a fine not exceeding five hundred dollars and imprisoned in the county jail for a term not exceeding one year. [C. L. 1876, ch. 35, § 85.]

Rescue of prisoner from custody of officer.

SEC. 956. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or shall attempt to rescue, any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer or other person who shall have the lawful custody of such prisoner, every person so offending shall, on conviction thereof, be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C. L. 1876, ch. 35, § 86.]

Suffering prisoner to escape before conviction.

SEC. 957. If any sheriff, coroner, jailor, keeper of a prison, constable or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, and be imprisoned in the county jail for any term not exceeding six months; *Provided*, That if such prisoner be in custody, charged with murder or other capital offense, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five hundred dollars. [C. L. 1876, ch. 35, § 87.]

Refusal to receive or arrest criminal.

SEC. 958. If any sheriff, coroner, keeper of a jail, constable or other officer, shall wilfully refuse to receive, or arrest, any person charged with a criminal offense, then such sheriff, coroner, jailor, constable or other officer, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding six months in the county jail. [C. L. 1876, ch. 35, § 88.]

Compounding criminal offense.

SEC. 959. If any person shall take money, goods, chattels, lands or other reward or promise thereof, to compound any criminal offense, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense. [C. L. 1876, ch. 35, § 89.]

Conspiracy to procure indictment.

SEC. 960. If any two or more persons shall conspire or agree falsely and maliciously to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offense, each of the persons so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year. [C. L. 1876, ch. 35, § 90.]

Unlawful exercise of office.

SEC. 961. If any person shall take upon himself to exercise or officiate in any office or place of authority in this territory without being lawfully authorized thereto, he shall, upon conviction, be fined in a sum not exceeding two hundred dollars. [C. L. 1876, ch. 35, § 91.]

Embracery.

SEC. 962. Embracery is an attempt to influence a juror or jurors, corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment and be forever disqualified to act as a juror. This section shall apply as well to the grand as petit jurors. [C. L. 1876, ch. 35, § 92.]

Common barratry.

SEC. 963. If any person or persons shall wickedly and wilfully excite and stir up any suit or quarrel between the people of this territory, either at law or otherwise, with a view to promote a strife and contention, every such person so offending, shall be deemed to have committed the crime of common barratry, and, upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, and if he be an attorney or counselor at law, he shall be suspended from the practice for any time not exceeding six months. [C. L. 1876, ch. 35, § 93.]

Officious intermeddling in suits.

SEC. 964. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party, with money, or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person so offending shall be deemed to have committed the crime of maintenance, and, upon conviction thereof, shall be fined and punished as in cases of common barratry; *Provided*, That it shall not be deemed maintenance for a man to maintain the suit of his kinsman, or servant, or poor neighbor out of charity. [C. L. 1876, ch. 35, § 94.]

Extortion by public officer.

SEC. 965. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this territory, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to execute or do his duty as such officer, except such as is, or shall be, allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction thereof shall be fined in any sum not exceeding two hundred dollars. [C. L. 1876, ch. 35, § 95.]

Malfeasance of public officer.

SEC. 966. Every clerk, sheriff, collector, treasurer, assessor or other territorial, county, district, township, city, town or school officer, or deputy of either, who shall be guilty of any palpable omission of duty, as such officer, or who shall wilfully or corruptly be guilty of oppression or partiality in the discharge of his official duties, or who shall demand or receive pay for services not authorized to be performed by him as such officer, or shall demand or receive pay for the performance of the duties, or supposed duties, of any public officer, unless duly authorized in writing to perform the duties of such officer in his place and stead, shall be guilty of malfeasance and shall, upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted shall be removed from office. The court shall have power, whenever any clerk of the district court or prosecuting attorney shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk or prosecuting attorney. It shall be the duty of the court, when judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled. [C. L. 1876, ch. 35, § 96.]

Emitting bills of credit.

SEC. 967. If any person, number of persons, or corporation, in this territory, without special leave from the legislative assembly, shall emit or utter any bill of credit, make, sign, draw or indorse any bond, promissory note, or writing, bill of exchange, or order, to be used as a general circulating medium, and in lieu of money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding five hundred dollars or be imprisoned not exceeding one year. [C. L. 1876, ch, 35, § 123.]

Defacing public notices.

SEC. 968. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from, or of any law of the United States, or of this territory, or any proclamation, advertisement or notification set up at any place in this territory, by authority of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars, or imprisoned in the county jail for a term not exceeding one month; *Provided*, That this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was, by law, to remain set up shall have expired. [C. L. 1876, ch. 35, § 124.]

Officer buying territorial and county warrants.

SEC. 969. It shall not be lawful for any person acting as territorial treasurer, territorial auditor, or any other territorial officer holding office in this territory, or any county treasurer, clerk, collector, or any other county officer, holding office in this territory, either directly or indirectly to buy or barter or trade for, sell or traffic in, any territorial or county scrip, county order, auditor's warrant or certificate of indebtedness, or other evidence of indebtedness of the territory, or any county therein, and such officer violating the provisions of this section shall be liable to indictment, and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding three months, or shall suffer both such fine and imprisonment in the discretion of the court. It shall be no defense to any indictment hereunder, that such warrant, order, scrip, certificate, or other evidence, hath not been countersigned and registered, or either of them, prior to such offense; but this section shall not be construed to forbid the sale by any officer of any such warrant, order or scrip, issued to him for his personal services or otherwise. [C. L. 1876, ch. 35, § 121.]

Refusal to pay territorial and county warrants.

SEC. 970. Any territorial or county treasurer, who, upon presentation of any auditor's warrant, territorial warrant, county order or like evidence of indebtedness, for payment, shall refuse payment thereof, there being then in such treasury sufficient funds appropriated by law, for the payment of such warrant, order or other like indebtedness, or wherefrom by law, payment thereof ought to be made, and any county treasurer or collector of taxes, who, upon presentation of any auditor's warrant, county order or other like certificate or evidence of indebtedness in payment of any taxes which may by law be paid therein, shall refuse to receive such order, warrant or certificate in payment of such taxes, every such officer so offending shall be liable to indictment, and upon conviction shall be fined in any sum not exceeding five hundred dollars. This section shall extend to the deputies of every such treasurer and collector of taxes. [C. L. 1876, ch. 35, § 122.]

CHAPTER 6.

OFFENSES AGAINST PUBLIC PEACE.

SECTION.
971. Disturbing peace in night time.
972. Assembling to disturb peace.
973. Affray.
974. Unlawful assemblage.
975. Riot.
976. Riot.
977. Officer refusing to prevent duel.
978. Libelling person for not accepting challenge
979. Libel.
980. Carrying concealed weapons.
SECTION.
981. Non-resident carrying weapons after notification by officer.
982. Penalty for violating last two sections.
983. Exhibiting deadly weapon in angry manner.
984. Discharging firearms from or near railroad trains—Copy of law to be posted in cars.
985. Arrest and trial of offenders against last section.
986. Selling or giving liquor to Indians.
987. Provoking an assault.

Disturbing peace in night time.

SEC. 971. If any person, at late or unusual hours of the night time, shall maliciously or wilfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises or by tumultuous and offensive carriage, threatening, traducing, quarreling, challenging to fight, or fighting, any person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisoned in the county jail not exceeding two months. [C. L. 1876, ch. 35, § 98.]

Assembling to disturb peace.

SEC. 972. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge, justice of the peace, sheriff, coroner, constable or other public officer, such person so offending, shall, on conviction, be severally fined in any sum not exceeding fifty dollars, and imprisoned in the county jail not exceeding one month. [C. L. 1876, ch. 35, § 99.]

Affray.

SEC. 973. If two or more persons shall, by agreement, fight in any public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray. [C. L. 1876, ch. 35, § 100.]

Unlawful assemblage.

SEC. 974. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months. [C. L. 1876, ch. 35, § 101.]

Riot.

SEC. 975. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances towards it, they shall be guilty of a riot, and on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned in the county jail not exceeding four months. [C. L. 1876, ch. 35, § 102.]

Riot.

SEC. 976. If two or more persons actually do an unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent or tumultuous manner, the persons so offending shall be deemed guilty of a riot, and on conviction, shall severally be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding two months. [C. L. 1876, ch. 35, § 103.]

Officer refusing to prevent duel.

Sec. 977. If any judge, justice of the peace, sheriff or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding five hundred dollars. [C. L. 1876, ch. 35, § 104.]

Libeling person for not accepting challenge.

Sec. 978. If any person or persons shall, in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as coward or cowards, or use any other opprobrious or abusive language for not accepting a challenge to fight a duel, such person or persons so offending, on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill or other publication may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication, and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment or either; *Provided*, *however*, That the testimony given by such witness shall in no case be used in any prosecution against such witness. [C. L. 1876, ch. 35, § 105.]

Libel.

Sec. 979. A libel is a malicious defamation, expressed either by printing or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt or ridicule. Every person, whether writer or publisher, convicted of this offense, shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the penitentiary not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living. [C. L. 1876, ch. 35, § 106.]

Carrying concealed weapons.

Sec. 980. Hereafter it shall be unlawful for any resident of any city, town or village, or for any one not a resident of any city, town or village, in said territory, but a sojourner therein, to bear upon his person, concealed or openly, any fire-arm or other deadly weapon, within the limits of any city, town or village. [C. L. 1876, ch. 52, § 1.]

Non-resident carrying weapons after notification by officer.

Sec. 981. If any person not a resident of any town, city or village of Wyoming Territory, shall, after being notified of the existence of the last preceding section by a proper peace officer, continue to carry or bear upon his person any fire-arm or other deadly weapon, he or she shall be deemed to be guilty of a violation of the provisions of said section and shall be punished accordingly. [C. L. 1876, ch. 52, § 2.]

Penalty for violating last two sections.

Sec. 982. Any person violating any of the provisions of the last two preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than fifty dollars, and, in the default of the payment of any fine which may be assessed against him, shall be imprisoned in the county jail for not less than five days nor more than twenty days. [C. L. 1876, ch. 52, § 3.]

Exhibiting deadly weapon in angry manner.

SEC. 983. Whoever shall, in the presence of one or more persons, exhibit any kind of fire-arms, bowie knife, dirk, dagger, slung shot, or other deadly weapon, in a rude, angry or threatening manner not necessary to the defense of his person, family or property, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [S. L. 1884, ch. 67, § 1.]

Discharging fire-arms from or near railroad trains—Copy of law to be posted in cars.

SEC. 984. It shall be unlawful for any person in this territory to fire any rifle, revolver or other fire-arm of any description whatever, from any window, door, or other part of any railroad car or train, engine or tender, or along the line of railroad during the passing of any train or engine, or when any person is passing in the vicinity of the person having in his possession such fire-arm, and any person so offending, shall, on conviction, be fined in a sum not exceeding twenty dollars, and for a second offense, confined in the county jail for a term not exceeding sixty days. And it shall be the duty of any railroad company to post a copy of this and the next succeeding section in every railroad car used for the transportation of passengers passing through this territory. But nothing in this section contained, shall be construed as preventing employes on railroad trains from carrying fire-arms, and using the same when necessary for the protection of themselves and the persons and property under their charge. [S. L. 1879, ch. 43, § 1.]

Arrest and trial of offenders against last section.

SEC. 985. It shall be lawful for any conductor, brakeman, or any person in charge of such railroad car, train or engine, to arrest any such person so offending, and take him before some justice of the peace in the county where the offense was committed, or deliver him to some officer of the county, and the justice, upon information as in other cases of misdemeanor, shall proceed to examine into the complaint, as if the arrest had been made by virtue of a warrant duly issued. [S. L. 1879, ch. 43, § 2.]

Selling or giving liquor to Indians.

SEC. 986. Any person or person who shall sell, barter or give away any spirituous or intoxicating liquor to any Indian or Indians within the limits of this territory, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred dollars, nor more than one thousand dollars, to which may be added imprisonment in the county jail for any period not less than ninety days nor more than six months, or both, at the discretion of the court. [C. L. 1876, ch. 86, § 1.]

Provoking an assault.

SEC. 987. Every person who shall use words, sign or gestures toward another, which are of a nature adapted to provoke, or who by such words, signs or gestures, shall provoke or attempt to provoke another to commit an assault, or assault and battery, or other breach of the peace, such person shall, upon conviction, be fined in any sum not exceeding twenty-five dollars, or imprisoned in the county jail for a term not exceeding ten days. [S. L. 1879, ch. 25, § 1.]

CHAPTER 7.

OFFENSES AGAINST PUBLIC MORALITY, HEALTH AND POLICE.

SECTION.

988. Bigamy.
989. Seduction under promise of marriage.
990. Unmarried person marrying a bigamist.
991. Adultery and fornication—Circumstantial proof.
992. Incestuous marriages defined.
993. Punishment for incestuous marriage.
994. Incest.
995. Public indecency.
996. Keeping house for practice of fornication—Evidence.
997. Circulation of obscene literature.
998. Enticing minors to gamble.
999. Selling liquor to minors and habitual drunkards.
1000. Disposition of fines.
1001. Gambling contracts declared void.
1002. Tavern keepers permitting gambling.
1003. Obstructing highways.
1004. Selling diseased meat or adulterated liquor,
1005. Failure of owner to remove or bury dead animal.
1006. Giving false weights in merchandise.
1007. Adulterating foods, medicines, etc.
1008. Selling spoiled food, medicine, etc.
1009. Cruelty to animals.
1010. Intoxicated physician prescribing drugs.
1011. Penalty if death ensue.
1012. Spreading contagious disease.
1013. Liability to damages in civil action.
1014. Keeping opium dens.
1015. Frequenting opium dens.
1016. Penalty for violating last two sections.
1017. Promoting lotteries.
1018. Selling lottery tickets.
1019. Advertising lottery.
1020. Putting offensive substances in creek, highway, etc., declared a nuisance—Penalty.
1021. Disposition of fines.
1022. Abatement of nuisance.
1023. Throwing sawdust into streams.
1024. Incorporated towns permitted to regulate nuisances.
1025. Vagrancy.
1026. Having possession of burglars' tools.
1027. Having possession of offensive weapons.
1028. Refusing to join posse comitatus.
1029. Grave robbing.
1030. Illegal voting.
1031. Bribing elector.
1032. Disturbing religious worship.
1033. Justices' jurisdiction of offenses named in last three sections.
1034. Selling liquor on Sunday or election day.

Bigamy.

SEC. 988. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending, shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory after such second marriage, shall be deemed proof of the commission of the crime of bigamy, and the trial of such cases may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons, for the space of five years together, prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be at the time of such second marriage, divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority, declared void. [C. L. 1876, ch. 35, § 107.]

Seduction under promise of marriage.

SEC. 989. Any person who shall, under promise of marriage, seduce and have illicit connection with any unmarried woman of previous chaste character, shall be guilty of a felony, and upon conviction, shall be punished by imprisonment in the territorial prison not exceeding three years; *Provided*, That the subsequent marriage of the parties may be pleaded in bar of a conviction. [C. L. 1876, ch. 16, § 1., ch. 35, § 108.]

Unmarried person marrying a bigamist.

SEC. 990. If any man or woman being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned in the penitentiary not more than one year. [C. L. 1876, ch. 35, § 109.]

Adultery and fornication—Circumstantial proof.

SEC. 991. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction thereof, shall be fined in any sum not exceeding two hundred dollars each, or imprisoned in the county jail not exceeding six months. This offense shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for second offense, such man or woman shall be severally punished twice as much as the former punishment; and for a third offense, treble, and thus increasing the punishment for each succeeding offense; *Provided, however*, That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution by their intermarriage, if such marriage can be legally solemnized, upon the payment of costs of such prosecution. [C. L. 1876, ch. 35, § 110.]

Incestuous marriages defined.

SEC. 992. Marriage between parents and children, including grandparents and grand-children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, and cousins in the first degree, are declared to be incestuous and absolutely void. This section shall extend as well to illegitimate as legitimate children and relations. [C. L. 1876, ch. 35, § 111.]

Punishment for incestuous marriage.

SEC. 993. Persons within the degree of consanguinity, within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication, with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by confinement in the penitentiary for a term not exceeding ten years nor less than one year. [C. L. 1876, ch. 35, § 112. S. L. 1882, ch. 52, § 1.]

Incest.

SEC. 994. If a father shall licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years, nor less than one year. [C. L. 1876, ch. 35, § 113. S. L. 1882, ch. 52, § 1.]

Public indecency.

SEC. 995. If any person shall be guilty of open lewdness or other notorious act of public indecency tending to debauch the public morals, or shall keep open any gaming house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common, ill-governed and disorderly house, to the encouragement of idleness, gaming, fornication or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding six months. [C. L. 1876, ch. 35, § 114.]

Keeping house for practice of fornication—Evidence.

SEC. 996. Any person who shall knowingly, either as owner or agent, let any house or place for the purpose of being used or occupied as a house or place for the practice of fornication or adultery, or who shall knowingly, either as owner or agent, suffer or permit such house or place to be used or occupied for such purpose, every such person shall be deemed guilty of a misdemeanor, and a guilty knowledge shall be presumed against any such person who fails to abate or to bring an action to abate such practice within three days after receiving notice, in writing, from any sheriff or constable of the county, or marshal or policeman of the town, city or village, that such house or place is being used or occupied for such purpose. And, for the purpose of proving such use and occupation, it shall be competent to give in evidence the reputation of the persons who live in or who resort to such house or place as well as the reputation, in the neighborhood, of such house or place, and every person convicted of a violation of this section shall be fined not exceeding one hundred dollars or imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court. [S. L. 1884, ch. 60, §§ 3 and 4.]

Circulation of obscene literature.

SEC. 997. If any person shall hereafter bring or cause to be brought or imported into the Territory of Wyoming for sale, or shall sell or offer to sell, any obscene, immoral, indecent or lascivious book, pamphlet, print, paper, drawing, lithograph, engraving, picture, daguereotype, stereoscopic picture, model, cast, instrument or article of indecent or immoral use, or book, paper or print of immoral or pernicious tendencies, it shall be the duty of any sheriff or deputy sheriff of any county, constable of any precinct or marshal or policeman of any city, town or village, at once, on any such matter coming to his notice, by complaint or otherwise, to arrest any such person as shall have the same in his possession, or shall have imported, sold or offered the same for sale, and to seize any and all such articles as above mentioned found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. The magistrate to whom any such obscene, immoral, indecent or lascivious book, pamphlet, print, paper, drawing, lithograph, engraving, picture, daguereotype, photograph, strereoscopic picture, model, cast, instrument or article of indecent or immoral use, or book, paper or print of immoral or pernicious tendencies, is delivered as above provided, must, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such matter so brought before him, and if he finds it to be, or if in his judgment it is obscene, immoral, indecent or lascivious, or of immoral or pernicious tendencies, he must deliver one copy of each of such articles so brought before him to the prosecuting attorney of the county in which the person so arrested is liable to complaint or trial, and must at once destroy all other copies. Upon the conviction of the accused of a violation of any of the provisions of this section, he shall be punished by a fine of not more than two hundred dollars, one-half of said fine to go to the complainant or to the officer making the arrest without complaint, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment. When in his judgment it is no longer necessary to keep the same to be used as evidence, the prosecuting attorney shall also destroy all copies left with him, as above provided. [S. L. 1884, ch. 63, § 1.]

Enticing minors to gamble.

SEC. 998. If any person shall, by any device or pretense, entice, or tempt and prevail upon, or cause any minor to engage with such person, or with any other person or persons, in any game whatsoever, for any sum of money or property of value, or shall make any bet or wager with such minor, or cause the same to be done, upon the result of any game, every such person shall, on conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not less than one hundred and fifty dollars. [C. L. 1876, ch. 35, § 116.]

Selling liquor to minors and habitual drunkards.

SEC. 999. No tavern keeper, saloon keeper or other dealer in spirituous liquors in the territory, shall sell, barter, give away or otherwise dispose of, either in person or by agent, or permit to be sold, bartered, given away or otherwise disposed of, to any person under the age of twenty-one years, or to any well known habitual drunkard, any spirituous, vinous, fermented or malt liquor of any kind whatever; and any person who shall violate the provisions of this section shall, on conviction, be fined in a sum not exceeding fifty dollars, or imprisoned in the county jail for a period not exceeding thirty days; and for a second offense shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail for a period not exceeding ninety days. For any such offense thereafter such person shall be punished in the same manner as is herein provided for a second offense. [S. L. 1884, ch. 65, § 1.]

Disposition of fines.

SEC. 1000. All fines collected upon any indictment, shall be paid, the one-half thereof to the person giving information of the offense, and the remainder shall be paid into the general fund of the county in which the offense was committed, and the person receiving the one-half of such fine as informer, shall be deemed and held to be a competent witness upon the trial of such offender. [C. L. 1876, ch. 35, §§ 117 and 154.]

Gambling contracts declared void.

SEC. 1001. All contracts, promises, agreements, conveyances, securities, and notes, made, given, granted, executed, drawn, or entered into, where the whole or any part of the consideration thereof shall be for any money, property, or other valuable thing won by any gaming, or by playing at cards, or any gambling device or game of chance, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting, shall be utterly void and of no effect. No assignment of any bill, bond, note, or other evidence of indebtedness, where the whole or any part of the consideration for such assignment shall arise out of any gaming transaction, shall in any manner off-set the defense of the person or persons making, entering into, executing, or giving such instrument so assigned, or the remedies of any person interested therein. [C. L. 1876, ch. 35, § 118.]

Tavern keepers permitting gambling.

SEC. 1002. Every tavern keeper who shall suffer or permit any game or games prohibited, or intended to be prohibited by this chapter, to be played in his tavern, or any out-house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern keeper for one year from such conviction. [C. L. 1876, ch. 35, § 119.]

Obstructing highways.

SEC. 1003. If any person, company or corporation shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway or common street or alley of any town or village, or any public bridge, or causeway, or public river, or stream, declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any water course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts; every person, company or corporation so offending, shall, upon conviction thereof, be fined not exceeding one hundred dollars; and every such nuisance may, by order of the district court before whom the conviction may take place, be removed and abated by the sheriff of the proper county. [C. L. 1876, ch. 35, § 120. S. L. 1886, ch. 73, § 1.]

Selling diseased meat or adulterated liquor.

SEC. 1004. If any person or persons, shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending, shall be fined not exceeding two hundred dollars. [C. L. 1876, ch. 35, § 120.]

Failure of owner to remove or bury dead animal.

SEC. 1005. It shall be the duty of the owner, or person having charge of an animal which may die in this territory, to remove the carcass to a distance of not less than half a mile from the nearest human habitation, or to bury it with not less than two feet of soil over it; and every person failing to so remove or bury such carcass, for more than forty-eight hours, shall upon conviction, be fined in a sum not exceeding one hundred dollars. And should such animal be the property or in charge of some person passing through this territory, then any peace officer may (without warrant) detain the owner or person in charge of such animal, or of the flock or herd from which it died, as soon as such owner or person shall have shown an intention not to so bury or remove said carcass, by removing from it, or removing such flock or herd from it a distance of half a mile or more, a reasonable time, not to exceed two days, until a warrant can issue upon an information duly sworn to. And the brand upon any such animal may be given in proof of the ownership of the same. [S. L. 1879, ch. 29, § 3.]

Giving false weights in merchandise.

SEC. 1006. Every person who, in putting up in any bag, bale, box, barrel or other package, any hops, cotton, wool, grain, hay or other goods usually sold in bags, bales, boxes, barrels or other packages by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, and thereby defrauding the purchaser, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not to exceed one hundred dollars. [S. L. 1884, ch. 2, § 1.]

Adulterating foods, medicines, etc.

SEC. 1007. Every person, who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine or any article used in compounding them, with a fraudulent intent to offer the same for sale, or to cause or permit the same to be offered for sale, as unadulterated or undiluted, and every person who fraudulently sells or keeps, or offers for sale, the same as unadulterated or undiluted, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not to exceed five hundred dollars, or imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment, at the discretion of the court. [S. L. 1884, ch. 2, § 2.]

Selling spoiled food, medicine, etc.

SEC. 1008. Every person who knowingly sells or keeps, or offers for sale, or otherwise disposes of, or tries to dispose of, any article of food; drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, shall be guilty of a misdemeanor, and on conviction of the same shall be fined not exceeding fifty dollars, or imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment, at the discretion of the court. [S. L. 1884, ch. 2, § 3.[

Cruelty to animals.

SEC. 1009. Any person or persons who may be deemed guilty of over-driving or riding, except in cases of sickness or necessity, any mare, gelding, mule or ass, or other domestic animal, or by over-loading the same, or abuse by beating or otherwise punishing the above animals, whereby damage is done or sickness or death may ensue, the said person or persons, upon conviction thereof before any justice of the peace (or any other court of justice) of this territory, shall be made to pay a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every offense, or by imprisonment in the county jail for not less than one month, nor more than three months, or both, in the discretion of the court. [C. L. 1876, ch. 38, § 1.]

Intoxicated physician prescribing drugs.

SEC. 1010. If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug or other medicine to another person which shall endanger the life of such other person, he shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined not exceeding one hundred dollars, or shall be imprisoned in the county jail not exceeding three months, or shall suffer both a fine and imprisonment, subject to the discretion of the court. [S. L. 1884, ch. 64, § 1.]

Penalty if death ensue.

SEC. 1011. In the event of death ensuing from the effects of any such prescriptions so prescribed while in a state of intoxication, as is mentioned in the last preceding section, the physician or other person so prescribing shall, upon conviction thereof, be adjudged guilty of manslaughter, and shall be punished accordingly. [S. L. 1884, ch. 64, § 2.]

Spreading contagious disease.

SEC. 1012. Any person who shall knowingly have or use about his premises, or, who shall convey or cause to be conveyed into any neighborhood, any clothing, bedding or other substance, used by, or in taking care of, any person afflicted with the small-pox or other infectious or contagious disease, or infected thereby, or shall do any other act with intent to, or necessarily tending to, the spread of such disease, into any neighborhood or locality, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined in any sum not more than five hundred dollars, or imprisoned in the county jail not exceeding six months, or by both fine and imprisonment; and the court trying any such offender, may also include in any judgment rendered, an order to the effect that the clothing or other property infected be burned or otherwise destroyed, and shall have power to carry such order into effect. [C. L. 1876, ch. 33, § 1.]

Liability to damages in civil action.

SEC. 1013. Any person guilty of violating the provisions of the preceding section, in addition to the penalties therein prescribed, shall be liable in a civil action in damages to any and all persons, who may, from that cause, become infected with such contagious disease; said damages shall be so assessed as to include, in addition to other damages, all expenses incurred by reason of such sickness, loss of time and burial expenses; and such action may also be maintained by the representative of any deceased person. [C. L. 1876, ch. 33, § 2.]

Keeping opium dens.

SEC. 1014. It shall be unlawful for any person or persons whomsoever to keep any house, saloon, hotel or any place whatsoever, either public or private where opium smoking or the use of opium in any form is practiced; but nothing in this section shall be construed to prevent the sale of opium in any drug store upon the written prescription of any duly authorized medical practitioner. [S. L. 1886, ch. 91, §§ 1 and 2.]

Frequenting opium dens.

SEC. 1015. It shall be unlawful for any person or persons whomsoever to reside in or to visit or frequent any house, saloon, hotel or any place whatsoever, either public or private where the use of opium in any form is practiced or indulged in. [S. L. 1882, ch. 75, § 2.]

Penalty for violating last two sections.

SEC. 1016. Any person violating the provisions of either of the last two preceding sections shall, upon conviction in any court of this territory, be fined for each offense in any sum not less than fifty dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than two months nor more than five months, one-half of which sum shall be paid to the person giving information of the offense, the other one-half to be paid into the treasury of the county where the offense was committed, for the benefit of the school fund of such county. [S. L. 1886, ch. 91, § 3.]

Promoting lotteries.

SEC. 1017. If any person shall in this territory open, set on foot, carry on, or promote, make or draw publicly or privately, any lottery, or scheme of chance, of any kind or description, by whatever name, style, or title the same may be known; or if any person shall, by such ways and means, expose or set for sale any house, or houses, mine or mining property, lands or real estate, or any goods or chattels, cash, or written or printed evidence of debt, or certificates of claims, or any thing or things of value whatever, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction, fined in any sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not exceeding three months. But nothing in this section shall be construed as applying to games of chance known as raffles or other honest games, and the tickets of such games shall be sold only in this territory. [S. L. 1879, ch. 56, § 1.]

Selling lottery tickets.

SEC. 1018. If any person or persons shall vend, sell, barter, or dispose of any lottery ticket or tickets, order or orders, device or devices of any kind, for or representing any number of shares, or any interest in any lottery or scheme of chance, or shall open or establish as owner or otherwise, any lottery or scheme of chance, by acting as owner, manager or agent in this territory for, or in behalf of any lottery or scheme of chance to be drawn, paid, or carried on either out of the territory or within it, every such person shall be deemed guilty of a misdemeanor and upon conviction fined in any sum not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding three months. [S. L. 1879, ch. 56, §2.]

Advertising lottery.

SEC. 1019. If any person shall by printing, writing, or in any way publishing in this territory, an account of any lottery or scheme of chance, of any kind or description whatever, to be carried on, held or drawn in this territory, by whatever name, style or title, the same may be denominated or known, stating where and when the same is to be drawn, or the prizes therein, or any of them, or the price of any ticket, or share or chance therein, or where any ticket may be obtained, or by such printing, writing or publishing, or in anyway aiding or assisting in the same, or in otherwise giving publicity to such lottery or scheme, such person shall, on conviction, be fined in any sum not exceeding one hundred dollars. [S. L. 1879, ch. 56, § 3.]

Putting offensive substances in creek, highway, etc., declared a nuisance—Penalty.

SEC. 1020. If any person or persons, company or corporation, in this territory, shall put or place, or caused to be put or placed, the carcass of any dead animal or the offal or refuse matter from any slaughter house, butchers' establishment, meat market, packing house or fish house, hog pen or stable, or any spoiled meats, spoiled fish, or any animal or vegetable matter in a putrid state, or liable to become decayed, or the contents of any privy vault, or any offensive matter or substance whatever, upon or into any river, bay, creek, pond, canal, ditch, lake, stream, railroad, road, street, alley, lot, field, meadow, public ground, common or market place, or if the owner or owners, occupant or occupants thereof, shall knowingly permit the same to remain in any of the aforesaid places or situations to the annoyance of the citizens of this territory, or of any of them, or shall neglect or refuse to remove or abate the nuisance occasioned thereby within twenty-four hours after knowledge of the existence of such nuisance upon any of the above described premises or places owned or occupied by him, her, it or them, or after notice thereof in writing from the sheriff or deputy sheriff of any county, or the constable of any precinct, or the marshal of any city, town or village in which such nuisance shall exist, every such person so offending, shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than fifty dollars; and if such nuisance is not abated within forty-eight hours thereafter, it shall be deemed a second offense against the provisions of this chapter, and every like neglect of each twenty-four hours thereafter, shall be so considered an additional offense and subject to a like penalty. [S. L. 1884, ch. 62, § 1.]

Disposition of fines.

SEC. 1021. Upon the payment of any fine assessed under the provisions of the last preceding section, by the person or persons violating the same, one-half thereof shall be paid to the officer or person upon whose complaint such prosecution under said section was commenced, and the residue of said fine shall be paid into the county treasury in the same manner as now governs the disposition of fines assessed and collected by law. [S. L. 1884, ch. 62, § 2.]

Abatement of nuisance.

SEC. 1022. It shall be the duty of the officer mentioned in the section next preceding the last, who shall receive notice or who shall have knowledge of any such nuisance as is therein defined and mentioned, to cause the same to be abated and removed forthwith, if the owner or owners, occupant or occupants of said premises neglect or fail so to do, and all of the expenses of abating and removing the same shall be chargeable to the party or parties creating, causing or permitting the continuance of such nuisance, and in favor of the officer causing the same to be abated and removed, and such expenses shall be recoverable by the person entitled thereto in a civil action in any court of competent jurisdiction; and for the satisfaction of any judgment recovered under this section, no property of the judgment debtor shall be exempt from seizure and sale by virtue of an execution issued thereon. [S. L. 1884, ch. 62, § 3.]

Throwing sawdust into streams.

SEC. 1023. If any person or persons who may own, run or have charge of any saw-mill in this territory shall throw or permit the sawdust therefrom to be thrown or placed in any manner into any river, stream, creek, bay, pond, lake, canal, ditch or other water course in this territory, such person or persons shall be liable to a like penalty as is provided in the third preceding section. [S. L. 1884, ch. 62, § 4.]

Incorporated towns permitted to regulate nuisances.

SEC. 1024. Nothing in the four preceding sections contained shall be so construed as to prevent any city, town or village, incorporated under the laws of this territory or the proper corporate authority thereof, from passing or enforcing any ordinance, by-law, regulation or rule, regulating, restraining, or prohibiting nuisances of any kind or character, or from enforcing any ordinance, by-law, rule, or regulation thereupon, already passed and in force. [S. L. 1884, ch. 62, § 5.]

Vagrancy.

SEC. 1025. Any person able to support himself in any respectable calling, who shall be found within the limits of this territory without any visible means of support, and living an immoral or worthless life, shall be deemed a vagrant, and, upon complaint made under oath by any resident of the county, before any justice of the peace within whose jurisdiction such person may be found, it shall be the duty of such justice to issue a warrant, under his hand and seal, for the apprehension of such person so charged, and cause him to be brought up immediately for an examination as to the charges made, which examination by the justice shall be conducted as in other cases, and any person found guilty.

of being a vagrant under this section shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months, or both, in the discretion of the court. [C. L. 1876, ch. 117, § 1 and 2.]

Having possession of burglars' tools.

SEC. 1026. If any person shall be found having upon him or her any pick lock, cow key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years nor less than one year. [C. L. 1876, ch. 35, § 126. S. L. 1882, ch. 52, § 1.]

Having possession of offensive weapons.

SEC. 1027. If any person or persons shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months. [C. L. 1876, ch. 35, § 127.]

Refusing to join posse comitatus.

SEC. 1028. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or the power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons, against whom there may have been issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons who, after having been arrested or confined, may have escaped from such arrest or imprisonment, or neglecting or refusing to aid and assist in preventing any breach of the peace, or commission of any criminal offense, being thereto lawfully required by any sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than twenty dollars nor more than two hundred dollars. [C. L. 1876, ch. 35, § 128.]

Grave robbing.

SEC. 1029. If any person or persons shall open the grave or tomb, where the body or bodies of any person or persons shall have been deposited, and shall remove the body or bodies or remains of any deceased person or persons from the grave or place of sepulture for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars; *Provided*, That this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority; *And*, *provided*, *also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends to any other place of sepulture that he or she may think proper. [C. L. 1876, ch. 35, § 129.]

Illegal voting.

SEC. 1030. If any person, being an elector, shall vote more than once at any election which may or shall be held by virtue of any law of this territory, or shall vote at any place or polls in, and at which he is not a voter, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months. [C. L. 1876, ch. 35, § 130.]

Bribing elector.

SEC. 1031. If any person shall, by bribery, menace, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this territory in giving his vote at any election, every person so offending and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this territory for five years. [C. L. 1876, ch. 35, § 131.]

Disturbing religious worship.

SEC. 1032. Any person who shall, by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt, or disturb any congregation or collection of citizens, assembled together for the purpose of worshiping Almighty God, or who shall sell, or attempt to sell, or otherwise dispose of, ardent spirits or liquors, or any articles which may tend to disturb any worshiping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles, shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars. [C. L. 1876, ch. 35, § 133.]

Justice's jurisdiction of offenses named in last three sections.

SEC. 1033. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses, mentioned in the last three sections, and may on view, or upon information on oath, cause every such person having offended as aforesaid, to be apprehended and brought before him to answer such charge. [C. L. 1876, ch. 35, § 134.]

Selling liquor on Sunday or election day.

SEC. 1034. It shall be unlawful for any one having license under the provisions of chapter one of title twenty-six to sell, give away or dispose of any spirituous, vinous or fermented liquors between the hours of ten o'clock, a. m. and two o'clock, p. m., on the Lord's day, commonly called Sunday, in towns having a population of five hundred or more. It shall also be unlawful to sell or give away any of the above described liquors at any place during the day an election is being held at such place between sun up and sun set on said day. Whoever shall be convicted of a violation of this section shall be deemed guilty of a misdemeanor. [S. L. 1882, ch. 65, § 4.]

CHAPTER 8.

OFFENSES BY CHEATS, SWINDLERS AND OTHERS.

SECTION.

1035. Making fraudulent transfers to defeat creditors.
1036. Obtaining credit by false representations.
1037. Obtaining goods by false pretenses.
1038. Hotel law to be posted.
1039. Obtaining board and lodging by false representations.
1040. Gambling on railroad trains, unlawful.
1041. Penalty for gambling on railroad trains.
1042. Playing "three-card monte" on railroad trains.
1643. Conductors authorized to arrest offenders.
1044. Using false weights.
1045. Cheating in extracting gold.
1046. Fraudulently selling land twice.

SECTION.

1047. Selling by false weights, etc.
1048. Warehousemen not to issue receipts until goods received.
1049. Not to issue receipts as security unless invested with ownership, etc.
1050. Not to issue second receipt for same goods.
1051. Not to sell or transfer goods without consent of owner.
1052. Penalty for violating four preceding sections.
1053. Signing false stock certificates.
1054. Issuing false stock certificates.
1055. Stable keeper not to use animals without consent of owner.

Making fraudulent transfers to defeat creditors.

SEC. 1035. Every person who shall be a party to any fraudulent conveyance of any land, tenements, hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands, or who, being parties as aforesaid, at any time, shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them as true, and done, had or made in good faith, or upon good consideration, or shall sell, alien or assign any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned to him, her or them, conveyed as aforesaid, or any part thereof, he, she or they so offending, shall, on conviction, be fined not exceeding one thousand dollars. [C. L. 1876, ch. 35, § 137.]

Obtaining credit by false representations.

SEC. 1036. If any person, by false representations, in writing, of his own responsibility, wealth or mercantile correspondence and connection, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth or mercantile character, and, by thus imposing on any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, merchandise or any valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding six months. [C. L. 1876, ch. 35, § 138.]

Obtaining goods by false pretenses.

SEC. 1037. If any person or persons shall knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and upon conviction, where the value of such chose in action, money, goods, wares, chattels, effects or other valuable thing shall be twenty-five dollars or more, shall be imprisoned in the penitentiary for a period not less than one year, nor more than ten years, and shall be sentenced to restore the property so fraudulently obtained if it can be done. In all cases, where the value of such chose in action, money, goods, wares, chattels, effects, or other valuable thing, is less than twenty-five dollars, the person so offending shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not more than six months, and shall be sentenced to restore the property so fraudulently obtained if it can be done. [S. L. 1884, ch. 35, § 1.]

Hotel law to be posted.

SEC. 1038. Every keeper of a hotel, or boarding house or lodging house, shall procure printed copies of the succeeding section and of section fourteen hundred and eighty-one and post one copy conspicuously in the office, and one copy in the dining room, and one copy in each and every sleeping room provided for guests or lodgers in such hotel or house under penalty of five dollars for each and every omission. [S. L. 1882, ch. 50, § 3.]

Obtaining board or lodging by false representations.

SEC. 1039. It is hereby declared to be a misdemeanor to procure board or lodging, or both, under and by false or fraudulent representations. Every person convicted of such misdemeanor shall be punished by a fine not exceeding twenty-five dollars, nor less than five dollars, or by imprisonment in the county jail not exceeding thirty days, nor less than five days, or by both such fine and imprisonment; *Provided*, That the action may be dismissed upon the payment by the defendant, of the amount due for such board or lodging, and the costs of the action. [S. L. 1882, ch. 50, § 2.]

Gambling on railroad trains, unlawful.

SEC. 1040. It shall be unlawful for any person to deal, play or open, or cause to be opened on any railroad train of cars carrying passengers, any game of cards, dice, or other gambling device, to be played for money, checks, or any other representatives of value whatever. [C. L. 1876, ch. 58, p. 361, § 1.]

Penalty for gambling on railroad trains.

SEC. 1041. All violations of the preceding section shall be adjudged misdemeanors, and may be punished by a fine not exceeding one hundred dollars, or imprisonment not to exceed three months, or by both fine and imprisonment, in the discretion of the magistrate. [C. L. 1876, ch. 58, p. 361, § 3.]

Playing "three-card monte" on railroad trains.

SEC. 1042. Any person found dealing, playing or opening the game commonly known as "three-card monte," on any railroad or passenger train in this territory shall be adjudged guilty of a misdemeanor, and, when convicted shall be punished by a fine not to exceed one hundred dollars, and imprisonment not less than ten, nor more than ninety days in the county jail. [C. L. 1876, ch. 58, p. 361, § 2.]

Conductors authorized to arrest offenders.

SEC. 1043. The conductor, or any person in charge of any such train, is hereby authorized and empowered to arrest any person found engaged in playing any of the games mentioned in the last three preceding sections, on such train, and to deliver any such person to any civil officer within this territory. [C. L. 1876, ch. 58, p. 361, § 4.]

Using false weights.

SEC. 1044. If any person shall knowingly have, keep, or use any false or fraudulent scales, or weights, for weighing gold, or gold dust, or any other article or commodity, every such person so offending, shall, on conviction, be fined not exceeding five hundred dollars, or imprisoned, in the county jail not exceeding six months. [C. L. 1876, ch. 35, § 140.]

Cheating in extracting gold.

SEC. 1045. The owner, manager, or agent of any species of quartz mill, arastra mill, furnace or cupel, employed in extracting gold from quartz, pyrites or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, shall, on conviction, be fined in a sum not exceeding one thousand dollars, or be imprisoned in the penitentiary for a term of one year. [C. L. 1876, ch. 35, § 141. S. L. 1882, ch. 52, § 1.]

Fraudulently selling land twice.

SEC. 1046. Any person or persons, who, after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, shall again, knowingly and fraudulently sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall, knowingly and fraudulently, execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years. [C. L. 1876, ch. 35, § 142.]

Selling by false weights, etc.

SEC. 1047. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye or other grain, he shall be deemed a common cheat, and, on conviction, shall be fined not less than two hundred dollars, and be imprisoned in the county jail not exceeding three months. [C. L. 1876, ch. 35, § 143.]

Warehousemen not to issue receipts until goods received.

SEC. 1048. No warehouseman, wharfinger or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been, *bona fide*, received into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt. [C. L. 1876, ch. 35, § 144.]

Not to issue receipts as security unless invested with ownership, etc.

SEC. 1049. No warehouseman, wharfinger or other person, shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce, or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid. [C. L. 1876, ch. 35, § 145.]

Not to issue second receipt for same goods.

SEC. 1050. No warehouseman, wharfinger or other person, shall issue any second receipt for any goods, wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncancelled. [C. L. 1876, ch. 35, § 146.]

Not to sell or transfer goods without consent of owner.

SEC. 1051. No warehouseman, wharfinger or other person shall sell or encumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt. [C. L. 1876, ch. 35, § 147.]

Penalty for violating four preceding sections.

SEC. 1052. Any warehouseman, wharfinger or other person who shall violate any of the foregoing provisions, relating to warehousemen, shall be deemed a cheat and be subject to indictment and, upon conviction, shall be fined in any sum not exceeding one thousand dollars and imprisoned in the penitentiary of this territory not exceeding five years and not less than one year, and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not. [C. L. 1876, ch. 35, § 148. S. L. 1882, ch. 52, § 1.]

Signing false stock certificates.

SEC. 1053. Every president, cashier, treasurer, secretary or other officer and agent of any bank, railroad, manufacturing or other corporations, who shall wilfully and designedly sign, with intent to issue, sell, pledge or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling or pledging of which such president, cashier, treasurer or other officer or agent shall not be authorized by the charter and by-laws of such corporation or by some amendment thereof, shall be adjudged guilty of felony, and any such person or persons shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars and by imprisonment in the penitentiary not more than ten years. [C. L. 1876, ch. 35, § 149.]

Issuing false stock certificates.

SEC. 1054. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employe of any bank, railroad, manufacturing or other corporation, and every other person who shall knowingly and designedly, or with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent, or simulated certificate, or other evidence of ownership, or of any share or shares, of the capital stock of any bank, railroad, manufacturing, or other corporation, every such person so issuing, selling, transferring, assigning, or pledging or causing the same to be done, shall be adjudged guilty of felony and shall be liable to indictment, and, on conviction, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years. [C. L. 1876, ch. 35, p. 277, § 150.]

Stable keeper not to use animals without consent of owner.

SEC. 1055. If any person keeping a public ranch or stable, shall use, or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that shall be left with him to be ranched, or fed, he shall forfeit to the owner, all ranch or stable fees that may be due upon such animal used, and the additional sum of five dollars for each day such animal may have been used; to be collected in the same manner as other debts. [C. L. 1876, ch. 35, p. 278, § 150.]

CHAPTER 9.

MALICIOUS MISCHIEF.

SECTION.
1056. Malicious destruction of property.
1057. Taking and using property without consent of owner.
1058. Injuring telephone and telegraph property.
1059. Injuring public jail.
1060. Court to fix punishment.
1061. Punishment and costs in misdemeanors fixed by court or justice.
1062. Disposition of fines.
1063. Prisoner may be committed until fine and costs paid.
1064. Taking logs, lumber, etc., from river.
SECTION.
1065. Jurisdiction of offenses named in last section.
1066. Duty of officer arresting said offenders.
1067. Receiving or secreting logs.
1068. Saw logs to be branded.
1069. Clerk's fees for recording brands.
1070. Destroying or altering log brands.
1071. Presumptive evidence from possession.
1072. Assessing or collecting timber tax without authority of law.
1073. Seizure of timber without lawful process.
1074. Aiding or abetting timber offenses.

Malicious destruction of property.

SEC. 1056. If any person shall wilfully and maliciously cut down, break down, level, demolish or otherwise destroy or damage any bridge, embankment, mill dam or ditch, being the property of another, or break or destroy the windows or doors of any dwelling house, or other house, belonging to or occupied by another, or break or destroy the windows or doors of any railway car belonging to another, whether occupied or not, or shall set fire to, or burn, or destroy, or procure, or cause to be burned or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain of any kind, being the property of another; or shall cut down, girdle or destroy any fruit or shade tree, standing or growing upon the premises of another, or cut, pull down or destroy any gate, post, railing or fence; pull down, burn or destroy any pile or piles of wood, boards or plank or other lumber, being the property of another; or shall, for malice or mischief, overturn any cart, wagon or other carriage, or run them into sloughs, holes or other places; or shall cut loose or set adrift any canoe, ferry, flat, skiff, boat or other vessel, for mischief; or shall unlawfully, wantonly or wilfully pull or remove any coupling pin or pins from between any railway cars, or let off any brake or brakes from any railway cars; or shall unlawfully, wantonly, wilfully, maliciously kill, wound, disfigure or destroy any horse, mare, filly, colt or gelding, or any bull, ox, steer, bullock, cow, heifer or calf, or any sheep or lamb, or any hog, pig or dog; or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding six months or both. [S. L. 1884, ch. 33, § 1.]

Taking and using property without consent of owner.

SEC. 1057. Every person who shall unlawfully take without the consent of the owner, any horse, mare, gelding, foal or filly, ass or mule, or any buggy or other vehicle or other personal property from the stable, lot, house, premises or pasture of another, or from a hitching post or rack, or any other place as aforesaid, having been lawfully placed there, with intent to set at large, injure or wrongfully use the animal or vehicle so taken, such person shall be guilty of criminal trespass, and upon conviction fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding three months, or both, and shall also be liable to the party injured in double the amount of damages sustained. [S. L. 1879, ch. 29, § 2.]

Injuring telephone and telegraph property.

SEC. 1058. Whoever unlawfully and intentionally injures, molests or destroys any building, line, wire, post, support, instrument, apparatus, materials or property of any company, owner or association used in transmitting intelligence by electricity through telephones or the like, shall forfeit to the use of said company, owner or association, treble the amount of damages, proved to have been sustained thereby. To be recovered in an action in the name of said company, owner or association, and may further be punished by fine not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or both. [S. L. 1882, ch. 102, § 1.]

Injuring public jail.

SEC. 1059. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy or injure, in whole, or in part, any public jail, or other place of confinement, every person so offending, shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act. [C. L. 1876, ch. 35, § 152.]

Court to fix punishment.

SEC. 1060. Whenever the punishment for any crime or misdemeanor is discretionary, as to the amount or extent, the court may determine and fix the same, whether the punishment consists of imprisonment or fine. [C. L. 1876, ch. 35, § 153. S. L. 1882, ch. 82, §§ 1 and 2.]

Punishment and costs in misdemeanors fixed by court or justice.

SEC. 1061. In all cases of misdemeanors tried before justices of the peace, or the district courts of this territory, by indictment, in which the defendant may be convicted, the punishment shall be within the discretion of the court, limited as penalties now are by law, except that payment of the costs of prosecution may be added to and made a part of the sentence, and the court may in its discretion direct the defendant to stand committed until the sentence, including the costs, shall be complied with. [C. L. 1876, ch. 15, § 1.]

Disposition of fines.

SEC. 1062. All fines imposed by virtue of any of the laws of this territory for the punishment of crimes and misdemeanors, where no other provisions are made shall, when collected, be paid into the treasury of the county where the offense shall be tried, for the use of such county; *Provided*, That nothing in this section contained, shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror. [C. L. 1876, ch. 35, § 154.]

Prisoner may be committed until fine and costs paid.

SEC. 1063. Any court shall have power, in all cases of conviction when any fine is inflicted, to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid, or otherwise legally discharged. [C. L. 1876, ch. 35, § 155.]

Taking logs, lumber, etc., from river.

SEC. 1064. Any person, or persons, who shall wilfully and without authority, take any saw logs, lumber, timber, railroad ties, poles, rails, posts, or fire wood, that may be on any river or creek, on the land adjoining or near a river, which may have floated down said river or creek, or on to said land, or shall remove, or attempt to remove, the said logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, or who shall cut or split said logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, or otherwise destroy or injure them, shall be held guilty of a misdemeanor and, upon conviction of any of the said offenses, shall be punished by imprisonment in the county jail of the proper county, not more than one year, nor less than three months, and shall pay a fine of not more than one hundred nor less than ten dollars; *Provided*, That any person may remove any logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, which may have floated on his own land or government land occupied by himself, to prevent obstructions to the occupant of said land. [C. L. 1876, ch. 78, p. 469, § 1.]

Jurisdiction of offenses named in last section.

SEC. 1065. Any justice of the peace shall have concurrent jurisdiction in his own county with the district court, of any offenses in the preceding section specified, when the value of the logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, taken or removed, shall be alleged not to exceed the sum of one hundred dollars, and in such case, the punishment shall be by fine, not less than twenty, nor more than eighty dollars, and if any person, on conviction for such an offense, shall refuse or neglect, for the space of ten days, to pay such fine, it shall be lawful for the justice before whom the conviction was had, to commit such person or persons to the jail of the proper county, for a period not less than three months, nor more than one year. [C. L. 1876, ch. 78, p. 469, § 2.]

Duty of officer arresting such offenders.

SEC. 1066. It shall be lawful for any officer in whose hands a writ shall have been placed for the apprehension of any person or persons, charged with taking or removing any saw logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, to arrest such person or persons, on any part of a river, creek or lake, on any island in a river or lake contiguous to his proper county, and to secure the logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, so taken or removed, so that the owner thereof may be put in possession of the same. [C. L. 1876, ch. 78, p. 469, § 3.]

Receiving or secreting logs.

SEC. 1067. Any person or persons who shall purchase, receive or secrete saw logs, lumber, timber, railroad ties, poles, rails, posts or fire wood so taken or removed, or who shall cut or otherwise injure logs, lumber, timber, railroad ties, poles, rails, posts or fire wood so taken or removed, shall be punished in the same manner, and to the same extent, as hereinbefore provided in this chapter for taking, removing or destroying saw logs, lumber, timber, railroad ties, poles, rails, posts or fire wood. [C. L. 1876, ch. 78, p. 469, § 4.]

Saw logs to be branded.

SEC. 1068. It shall be deemed necessary for the owners of saw logs, lumber, timber, railroad ties, poles, rails, posts or fire wood, to brand the same with a good and sufficient brand, said brand to be recorded in the office of the county clerk, or register of deeds for the county, or counties, where such creek, river or lake is situated. [C. L. 1876, ch. 78, p. 469, § 5.]

Clerk's fee for recording brand.

SEC. 1069. Each county clerk or register of deeds shall be entitled to receive the following fees for his services under the provisions of the preceding section, to-wit: For recording any brand, fifty cents; for giving certificate of the same, fifty cents. [C. L. 1876, ch. 78, p. 470, § 6.]

Destroying or altering log brands.

SEC. 1070. Whoever shall unlawfully cut out, alter or destroy any brand of the owner, made on any logs, timber, lumber, railroad ties, poles, rails, posts, or fire wood, put into any river, creek or lake, he shall, on conviction, be fined in a sum not less than ten dollars nor more than fifty dollars, and shall be liable to the party injured in three times the amount of damages. [C. L. 1876, ch. 78, p. 470, § 7.]

Presumptive evidence from possession.

SEC. 1071. In any suit under the provisions of the preceding section, if such logs, timber or lumber, railroad ties, poles, rails, posts or fire wood shall be found in the possession of the defendant, with the marks cut out, altered or destroyed, it shall be considered presumptive evidence of his guilt, and the burthen of proof shall be upon him to discharge himself. [C. L. 1876, ch. 78, p. 470, § 8.]

Assessing or collecting timber tax without authority of law.

SEC. 1072. Any person or persons who shall assess, levy or collect any tax, contribution, rate or fine, or shall attempt or threaten, or offer to assess, levy or collect any tax, contribution, rate or fine within the limits of this territory, on any timber, lumber, wood or other property of whatever description, without due process of law first had and obtained, or in violation of the laws of the United States or of this territory, the person or persons so offending shall be guilty of felony, and on conviction shall be fined three times the amount so assessed or attempted to be assessed, and imprisoned in the penitentiary not less than one year nor more than five years, one-half the fine so assessed shall be paid to the party complaining, the remainder to the general county fund. [C. L. 1876, ch, 78, p. 470, § 1.]

Seizure of timber without lawful process.

SEC. 1073. Any person or persons who shall levy on, seize, attach or take possession of any timber, lumber, ties, spiles or wood of any description, under pretense of holding the same for non-payment of any tax, contribution, rate or fine due the United States, or under the pretense that the same has been cut on the public lands of the United States, shall be guilty of a felony, and on conviction shall be fined not less than five hundred dollars, and imprisoned in the penitentiary not less than one year, unless the person or persons so offending shall have been duly serving a process of court, or shall prove that the timber, lumber, ties, spiles or wood of any description so seized by them was cut on the public lands of the United States within this territory, in violation of the laws of the United States. [C. L. 1876, ch. 78, p. 470, § 2.]

Aiding or abetting timber offenses.

SEC. 1074. Any person or persons aiding, abetting or counseling the commission of any of the offenses in the last two sections described, either before or after the commission thereof, shall be regarded as principals to said felony, and on conviction shall be punished as such. [C. L. 1876, ch. 78, p. 471, § 3.]

CHAPTER 10.

OFFENSES AGAINST PUBLIC POLICY.

SECTION.
1075. Contract for alien labor void.
1076. Alien may recover upon quantum meruit.
1077. Third party receiving pay for alien's labor.

Contracts for alien labor void.

SEC. 1075. No contract made for labor or services with any alien or foreigner previous to the time that such alien or foreigner may come into the territory, shall be enforced within this territory for any period after six months from the date of such contract. [C. L. 1876, ch. 37, § 1.]

Alien may recover upon quantum meruit.

SEC. 1076. Any alien or foreigner who shall hereafter perform labor or services for any person or persons, company, or corporation within this territory shall be entitled to recover from such person or persons, company or corporation, a reasonable compensation for such labor or services, notwithstanding such person or persons, company or corporation, may have paid any other party or parties for the same; and in actions for the price of such labor or services no defense shall be admitted to the effect that the defendant or defendants had contracted with other parties, who had, or pretended to have, power or authority to hire out the labor or services of such party or parties, or to receive the pay or price for such labor or services. [C. L. 1876, ch. 37, § 2.]

Third party receiving pay for alien's labor.

SEC. 1077. Any person, whether he or she, acts for himself or herself, or as agent, attorney or employe for another or others, who shall, in pursuance of, or by virtue of, any contract made with any alien or foreigner, made before such alien or foreigner came into the territory, receive or offer to receive any money, pay or remuneration for the labor or services of any alien or foreigner, excepting the person so performing such labor or services, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be fined in a sum not less than five hundred dollars, and not more than five thousand dollars, and imprisoned in the county jail for not less than three nor more than twelve months, for each and every offense. [C. L. 1876, ch. 37, § 3.]

CHAPTER 11.

REWARDS FOR APPREHENSION OF CRIMINALS.

SECTION.
1078. When governor to offer rewards.
1079. Prosecuting attorney to make application to governor.
1080. Advertisement by governor of the reward offered—Reward may be offered for unknown criminal.
1081. Reward for stock-thief, robber and train wrecker.
1082. Reward if offender arrested out of county.

When governor to offer rewards.

SEC. 1078. Whenever the governor of this territory is satisfied that a felony has been committed within the territory, and that the party charged therewith has not been arrested, or has escaped therefrom, or having been convicted has escaped from custody he shall upon the request of the prosecuting attorney for the county wherein the crime is alleged to have been committed, offer a reward of not exceeding five hundred dollars in any case, for the arrest and delivery of such person, which reward upon the certificate of the governor that the same has been earned, shall be audited and paid out of the county treasury wherein the offense is alleged to have been committed, or where the party was convicted, as the case may be. [S. L. 1882, ch. 88, § 1.]

Prosecuting attorney to make application to governor.

SEC. 1079. All applications to the governor to offer rewards under the last preceding section shall be in writing and signed by the prosecuting attorney for the county wherein the offense is alleged to have been committed, and shall be accompanied with a statement showing the sex of the alleged offender or convict together with his or her probable age and general appearance when last seen, and the offense he or she is charged with having committed or been convicted of, and in case of conviction so much of the record shall be attached as will show the conviction, and where not convicted the date of the commission of the alleged offense. [S. L. 1882, ch. 88, § 2.]

Advertisement by governor of the reward offered—Reward may be offered for unknown criminals.

SEC. 1080. Upon receiving the application and statement hereinbefore provided for, it shall be the duty of the governor forthwith to prepare and cause to be issued and published an advertisement in one newspaper published at the capital and one in the county where the offense is alleged to have been committed if there be a newspaper published in such county, said advertisement to be inserted three times in each paper, in which shall be set forth the name of the alleged offender, or convict, together with a description of his or her person as furnished by the prosecuting attorney as hereinbefore required, together with the offense alleged to have been committed, or for which conviction has been secured, and the governor may in his discretion in any case, also cause not more than five hundred postal cards containing such rewards likewise to be printed and circulated, the expense of which advertisements and postal cards, when certified by the governor shall be audited and paid out of the county treasury where the alleged offense has been committed. This and the last two preceding sections shall be construed to authorize the governor, upon request of the prosecuting attorney, to offer rewards also in cases where the person or person who committed the felony are unknown, and no description of them can be given. [S. L. 1882, ch. 88, § 3. S. L. 1884, ch. 79, § 1.]

Reward for stock thief, robber or train wrecker.

SEC. 1081. Any sheriff, or other person or persons, arresting any horse, cattle or mule thief, highway robber, mail robber, or person obstructing or attempting to obstruct, or wrecking or attempting to wreck any railroad train in the Territory of Wyoming, shall receive a reward of two hundred and fifty dollars, to be paid by the county where the offense was committed, upon conviction and sentence of the offender to the penitentiary, for the term of not less than one year. [S. L. 1879, ch. 28, § 1.]

Reward if offender arrested out of county.

SEC. 1082. If the offender is arrested in any other county, or is brought into this territory upon requisition, the same reward shall be allowed the party who arrested such party and brings him into this territory. [S. L. 1879, ch. 28, § 2.]

TITLE 11. ELECTIONS.

CHAPTER 1. GENERAL AND SPECIAL ELECTIONS—QUALIFICATIONS OF ELECTORS.
CHAPTER 2. MANNER OF CONDUCTING ELECTIONS AND CANVASSING RETURNS.
CHAPTET 3. MANNER OF CONTESTING ELECTIONS.
CHAPTER 4. MISCELLANEOUS PROVISIONS.

CHAPTER 1.

GENERAL AND SPECIAL ELECTIONS—QUALIFICATIONS OF ELECTORS.

SECTION.
1083. General elections—Officers to be chosen.
1084. Special elections—When may be held.
1085. When vacancies to be supplied at general elections.
1086. Special elections, how conducted.
1087. Place of holding elections.
1088. When judges may change polls.
1089. Duties of judges upon changing polls.
1090. Secretary to give notice of officers to be elected.
1091. Secretary to give notice of existing vacancy
1092. Secretary to give notice of expiration of term of legislators.
1093. Special elections by whom ordered.
1094. Form of order.
SECTION.
1095. Special election to fill vacancy in legislature.
1096. Counties to be divided into election precincts.
1097. Proclamation and notice of election.
1098. Appointment of judges of election—Notice.
1099. Clerks of election—Term of service of judges and clerks.
1100. Electors to fill vacancy in judges.
1101. Oath of clerk and judges to be in writing, etc.
1102. Qualifications of electors.
1103. Female suffrage.
1104. Persons disqualified from voting.

General elections—Officers to be chosen.

SEC. 1083. There shall be held in the several voting precincts of this territory, on the Tuesday next after the first Monday in November, eighteen hundred and eighty, and every two years thereafter, a general election, at which the following officers shall be chosen, that is to say: Members of the council and house of representatives, delegate to congress, sheriff, county clerk, probate judge and county treasurer, county and prosecuting attorney, county commissioners, superintendent of schools, coroner, surveyor, assessor, justice of the peace and constables; *Provided, always*, That the offices of probate judge and county treasurer shall appear on the ballots as one office only, and that the person elected probate judge shall be ex-officio county treasurer during the term for which he shall have been elected. [S. L. 1886, ch. 79, § 1.]

Special elections—When may be held.

SEC. 1084. Special elections shall be held in the following cases, and for the election of the following officers:

First—When there has been no choice at the general election of a delegate to congress, members of the council or house of representatives, or any county officer who should properly have been chosen at such general election;

Second—When the rights of a person elected to the office of member of the council, member of the house of representatives, or either of the said county offices shall cease, by death or otherwise, before the commencement of the term or service for which he shall have been elected;

Third—When a vacancy shall occur in the office of sheriff, county clerk, probate judge, county treasurer, county and prosecuting attorney, or county commissioner, after the commencement of the term of service and more than one year before the next general election;

Fourth—When a vacancy occurs in the office of members of the council, or members of the house of representatives, after the general election and before the meeting of the legislative assembly. [S. L. 1879, ch. 34, § 3. S. L. 1884, ch. 41, § 1.]

When vacancy to be supplied at general election.

SEC. 1085. A vacancy in either of the offices named in section ten hundred and eighty-three, which shall not have been supplied by an election, before the general election next succeeding the happening thereof, may be supplied at such election. [S. L. 1879, ch. 34, § 4.]

Special elections, how conducted.

SEC 1086. Special elections shall be conducted, and the results thereof canvassed and certified, in all respects, as near as practicable, in the same manner as general elections, except as otherwise directed; and no special election shall be held within ninety days preceding a general election, except as hereinafter provided. [C. L. 1879, ch. 34, § 5.]

Place of holding elections.

SEC. 1087. All general and special elections shall be held at the place in each precinct or district where the last election was held, or at such other place therein as shall have been ordered by the board of county commissioners, except as hereinafter provided; *Provided*, Nothing in this title shall prevent the holding of two or more polls in one precinct or district where the same shall be ordered by the commissioners. [S. L. 1879, ch. 34, § 6.]

When judges may change polls.

SEC. 1088. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled at or as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place, forthwith proceed with the election. [S. L. 1879, ch. 34, § 7.]

Duties of judges upon changing polls.

SEC. 1089. Upon adjourning any election as provided in the preceding section, the judges shall cause proclamation thereof to be made and shall station a constable or some other proper person at the place where the adjournment was made, to notify all electors arriving at such place, of the adjournment and the place to which it was made. [S. L. 1879, ch. 34, § 8.]

Secretary to give notice of officers to be elected.

SEC. 1090. The secretary of the territory shall, between the first day of September and the fifteenth day of the same month in each year in which a delegate to congress or any other territorial officer is to be elected for a full term, make out and cause to be delivered to the board of county commissioners of each county, a notice in writing, stating that at the next general election the before mentioned territorial or county officers are to be elected, or so many of such officers as are then to be chosen. [S. L. 1879, ch. 34, § 9.]

Secretary to give notice of existing vacancy.

SEC. 1091. If any vacancy shall exist in the office of delegate to congress or any other territorial office proper to be supplied at the ensuing general election, one month before such election the secretary of the territory shall give notice in writing to the board of county commissioners of each county, specifying the cause of such vacancy, the name of the officer in whose office it occurred and the time when his term of office would have expired. [S. L. 1879, ch. 34, § 10.]

Secretary to give notice of expiration of term of legislators.

SEC. 1092. The secretary of the territory shall, between the first day of September and the fifteenth day of the same month in each year in which the official term of any member of the council or member of the house of representatives shall expire, make out and cause to be delivered to the board of county commissioners of each county comprising such district, or to the board of county commissioners of each county which shall form a part thereof, a notice in writing specifying the number of the district and the name of the member or members whose term of office will so expire. [S. L. 1879, ch. 34, § 11.]

Special elections, by whom ordered.

SEC. 1093. All special elections for county and precinct officers, and the filling of all vacancies at a general election shall be ordered by the county commissioners, which order shall be countersigned by the clerk of the board of county commissioners. In all other cases of special elections they shall be called by the governor. [S. L. 1879, ch. 34, § 12.]

Form of order.

SEC. 1094. Every order or writ issued for a special election, shall specify the county or district in which such election is to be held, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office would have expired, and the day on which such election is to be held, which shall not be less than twenty nor more than forty days from the date of the order or writ, except as hereinafter provided, and the same shall be forthwith delivered to the sheriff of the proper county, or in case of a vacancy in a district comprised of more than one county, then to the sheriff of each county in such district. [S. L. 1879, ch. 34, § 13.]

Special election to fill vacancy in legislature.

SEC. 1095. A special election to fill a vacancy occurring in the council or house of representatives may be held upon five days notice, given by the board of county commissioners of any county or counties from wherein such vacancy exists; *Provided*, That upon such notice only no particular form, color or texture of ballots shall be adhered to; *Provided*, *further*, That in all cases where notice is given by authority of law for an election to be holden in less than ten days from the notice thereof, the county clerk shall perform the duties prescribed in section eleven hundred and fifty-seven, before the time fixed by law for the opening of the polls at such election. [S. L. 1879, ch. 34, § 71.]

For special election to fill vacancies in legislature, see §§ 1093 and 1173.

Counties to be divided into election precincts.

SEC. 1096. County commissioners of the several counties in this territory, are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county, and to appoint as many sets of judges of election to receive votes at the county seats as they may think necessary, and shall designate the house or place in such precinct, and in the precinct including the county seat, the house or houses, the place or places, at which elections are to be holden, and the precincts and places of holding elections so established shall so remain until changed by the board of county commissioners; *Provided always*, That it shall be the duty of county commissioners at any time to change any place of holding elections, upon a petition of a majority of voters residing within said precinct; *And also*, *Provided*, That it shall be the duty of the board of county commissioners, upon the affidavit of two or more citizens, showing that there are twenty or more citizens in any given part of the county, located at an inconvenient or inaccessible distance from any established voting precinct, to make a new precinct in accordance with the fact, at a point most convenient or central to the majority of said electors. [S. L. 1879, ch. 34, § 14.]

Proclamation and notice of election.

SEC. 1097. It shall be the duty of the board of county commissioners of the several counties of this territory, to issue a proclamation at least thirty days prior to any general or special election to be holden within their respective counties, except as otherwise provided in this title, setting forth the names of all the offices to be filled at such election, the number of persons required by law to fill such offices or vacancies, occurring under the law in such offices; also to describe fully the color, size, form and texture of all ballots to be used at the ensuing election, said ballots to be of sufficient length and width to allow the names of all the offices and the names of all the persons required by law to fill such offices to be written or printed, or partly written and partly printed thereon, and no ballot shall be received by the judges of election in any of the counties of this territory that is of a different size, form, color or texture than described by the board of county commissioners of their respective counties in their proclamation as herein provided. The county commissioners of the several counties shall cause such proclamation to be posted in a conspicuous place at every postoffice within their respective counties, and shall also cause the same to be published in the official paper of their respective counties, (if there be one), at least thirty days before the ensuing election; *Provided, further*, The board of county commissioners of the several counties shall furnish at the expense of their respective counties paper in equal amounts, to each political party within their respective counties, not less than two weeks before said election; said paper shall be of the same color and texture for all parties, and the same as described in their proclamation provided for in this section. [S. L. 1879, ch. 34, § 15.]

For additional requirements of proclamation see § 1112.

Appointment of judges of election—Notice.

SEC. 1098. The board of county commissioners shall respectively, at the last regular session preceding any election, (but if said regular session be within thirty days before the election, then a special meeting shall be called), appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election, in each election precinct, and the clerk of said board shall make out, and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice in writing, directed to the judges so appointed, and it shall be the duty of said sheriff within five days after receipt of said notice to transmit said notice by registered mail to each of said judges of election; *Provided*, That said sheriff may serve said notice in person or by deputy upon the judges of election in the county seat of his county. [S. L. 1879, ch. 34, § 16. S. L. 1882, ch. 42, § 1.]

Clerks of election—Term of service of judges of election.

SEC. 1099. The said judges of the election shall choose two persons, having similar qualifications with themselves, to act as clerks of the election; the said judges of election shall be, and continue, judges of all elections of officers to be held within their precincts for one year and until other judges shall be appointed, as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of the election. [S. L. 1879, ch. 34, § 17.]

Electors to fill vacancy in judges.

SEC. 1100. If, at any time appointed by law for the opening of any election, any person appointed to act as judge of the election as aforesaid, shall neglect, or refuse, to be sworn or affirmed to act in such capacity, the place of such person shall be filled by the votes of such qualified voters residing within the precinct, as may then be present at the place of election, and the person or persons so elected or nominated to fill such a vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the board of county commissioners. [S. L. 1879, ch. 34, § 18.]

As to filling vacancies in judges, see § 1105.

Oath of clerks and judges to be in writing, etc.

SEC. 1101. The clerks of the election shall, before they enter upon the duties of their office, take a like oath as hereinafter required of judges of election. The oath of judges and clerks to be written or printed, or partly written and partly printed out in full, and signed by such judges and clerks, and subscribed by the officer or person administering the oath. [S. L. 1879, ch. 34, § 19.]

For oath of judges and clerks, see §§ 1105 and 1106.

Qualifications of electors.

Sec. 1102. Every person above the age of twenty-one years, who shall have been a resident of this territory six months and of his or her county thirty days prior to any election, and who is a citizen of the United States, or has declared on oath before a competent court of record his or her intention to become such, and has taken an oath to support the constitution and government of the United States, shall be entitled to vote and be eligible to any office within said territory, except as hereinafter provided. [S. L. 1886, ch. 18, § 1.]

Female suffrage.

Sec. 1103. Every woman of the age of twenty-one years, residing in this territory, may, at every election to be holden under the laws thereof, cast her vote. And her rights to the elective franchise and to hold office shall be the same under the election laws of the territory, as those of electors. [S. L. 1879, ch. 50, § 1.]

Persons disqualified from voting.

Sec. 1104. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, felony or bribery, unless restored to civil rights by pardon; nor shall any person who shall have made, or become, either directly or indirectly, interested in any bet, or wager, depending upon the result of any election at which he shall offer to vote, be permitted to vote at such election. [S. L. 1879, ch. 34, §§ 21 and 786.]

CHAPTER 2.

MANNER OF CONDUCTING ELECTIONS AND CANVASSING RETURNS.

SECTION.
1105. Manner of filling vacancy in judges—Oath of judges.
1106. Oath of clerks.
1107. Clerk to keep poll-list.
1108. Time and manner of opening and closing polls.
1109. Judges of election to appoint constable.
1110. Powers of constable.
1111. Disturbing elections—Prosecution, etc.
1112. Electors to have free access to polls—Challengers.
1113. Electors privileged from arrest.
1114. Names to be on one ballot.
1115. Voting to be by ballot, etc.
1116. Where elector shall vote.
1117. Challengers to be admitted to election room.
1118. Oath of elector when vote challenged.
1119. Vote to be received when oath taken.
1120. Who may administer oath.
1121. Ballot box—Manner of protecting.
1122. Manner of receiving ballots—Judges and clerks to challenge.
SECTION.
1123 How poll lists and ballot box kept during adjournment.
1124. Manner of canvassing and returning votes—Form of certificate.
1125. Poll book, etc., to be returned to county clerk—Special messenger.
1126. Disposition of ballots by county clerk.
1127. Canvass of returns by county clerk and justices—Certificates of election.
1128. County clerk to make certificate for compensation of judges, etc.
1129. Copy of abstract of votes to be sent to secretary.
1130. When secretary to send messenger for returns.
1131. Territorial canvassing board and its duties—Penal provisions.
1132. Refusing to receive votes—Penalty.
1133. Neglect of duty by county clerk—Penalty.
1134. Mutilating or stealing poll book—Penalty.
1135. All precincts returned to be counted.

Manner of filling vacancy in judges—Oath of judges.

Sec. 1105. At all special or general elections held in the territory, where the judges provided by law, or some of them, are absent or have not received notice of appointment, the electors present at the polls of any election at the hour of nine o'clock in the forenoon, shall proceed by *viva voce* to elect persons qualified as voters at such election to fill any vacancy to serve as judges of election, who, whether appointed by the commissioners or elected, shall then and there and before entering upon their duty as judge of election, severally take the following oath: "I, A. B., do solemnly swear (or affirm) that I will impartially, and to the best of my knowledge and ability, perform the duties of judge of this election, and I will studiously endeavor to prevent all frauds, deceit and abuse in conducting the same." Such oath may be taken before any justice of the peace or other person authorized to administer oaths, but if no person authorized to administer an oath be present, then such judges shall administer the oath to each other, with like effect in all proceedings, both civil and criminal, as though the oath had been administered by a person authorized to administer oaths, independent of this title. [S. L. 1879, ch. 34, § 22. S. L. 1882, ch. 42, § 2.]

As to filling vacancy in judges, see § 1100.
Oaths of judges and clerks to be in writing, etc., § 1101.

Oath of clerks.

SEC. 1106. The clerks of election shall take an oath similar in character to that required by law to be taken by the judges, which oath may be administered by the judges to the clerks. [S. L. 1879, ch. 34, § 23.]

Clerks to keep poll lists.

SEC. 1107. Each clerk of the election shall keep a poll list, which shall contain a column headed "number," and another headed "names of voters." The name of each elector voting shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter placed opposite his or her name in the column headed "number." [S. L. 1879, ch. 34, § 72.]

Time and manner of opening and closing polls.

SEC. 1108. At all elections, a poll shall be opened at the place of election in each precinct. Such polls shall be opened as soon after nine o'clock in the forenoon as possible, and be kept open until sundown without adjournment. When opening the polls, one of the clerks or judges of the election shall make proclamation of the same, and at least thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour. [S. L. 1879, ch. 34, § 24.]

Judges of election to appoint constable.

SEC. 1109. The judges of election shall appoint some constable present (if there shall be one) to preserve order at and about the polls. If no officer be in attendance, the judges of the election shall appoint one, and he shall have all the powers of a regular constable, and be obeyed as such. [S. L. 1879, ch. 34, § 25.]

Powers of constable.

SEC. 1110. Any constable attending such election may call to his aid a sufficient number of citizens to arrest any disorderly person or suppress any riot or disorder during the election. Whoever conducts himself in a riotous or disorderly manner at any election, and persists in such conduct after being warned to desist, may be arrested without warrant. [S. L. 1879, ch. 34, § 70.]

Disturbing elections—Prosecution, etc.

SEC. 1111. If any person conducts himself in a noisy, riotous or tumultuous manner, at or about the polls, so as to disturb the election, or insults or abuses the judges or clerks of election or any voter in exercising his right of suffrage, it shall be the duty of the officer present, forthwith to arrest such offending person or persons, and take him or them before some justice of the peace, if there be one near the place of holding the election, or if there be no justice of the peace at such place, then before the judges of election, and they are hereby authorized, by a warrant under their hands, or a majority of them, to commit such offender to the jail of the county for a term not exceeding twenty-four hours. If such offender be taken before a justice of the peace, he shall be dealt with as one guilty of a breach of the peace, and punished accordingly; but in all cases, such offender, if qualified, shall be allowed to vote before being committed, if he desire to do so. [S. L. 1882, ch. 34, § 26.]

Electors to have free access to polls—Challengers.

SEC. 1112. A space of fifteen feet, in every direction from the polls, shall be kept open and clear of all persons except one challenger of good conduct and behavior, selected by each political party, to detect and challenge illegal voters; and the voters shall approach the polls from one direction, line, door or passage, and depart in another as nearly opposite as convenient. A copy of this section shall be published and posted with the notice of any general or special election. [S. L. 1879, ch. 34, § 27.]

Electors privileged from arrest.

SEC. 1113. Electors shall, in all cases, except in those of felony, or breach of the peace, be privileged from arrest during their attendance on the elections, and in going to, and returning from the same. [S. L. 1879, ch. 34, § 28.]

Names to be on one ballot.

SEC. 1114. The names of all candidates for which the electors intend to to vote at any general or special election, shall be written or printed upon the same ballot, and the office to which he desires each to be elected shall be designated upon the ballot. [S. L. 1879, ch. 34, §§ 29 and 73.]

Voting to be by ballot, etc.

SEC. 1115. Every elector shall vote by ballot, and each person offering to vote, shall deliver his ballot to one of the judges of election, in the presence of the other. [S. L. 1879, ch. 34, § 30.]

Where electors shall vote.

SEC. 1116. It shall be lawful for any elector to vote for delegate to congress at any place of holding election in the territory, and for all other officers to be voted for in his county, except precinct officers, at any voting place in his county, but precinct officers must be voted for only in their respective precincts. [S. L. 1879, ch. 34, § 31.]

Challengers to be admitted to election room.

SEC. 1117. The judges of election shall allow at least one, and not more than two, legal voters of each party to the contest, to be chosen by the parties respectively, into the room where the election is held, to act as challengers of voters at such election. [S. L. 1879, ch. 34, § 76.]

Oath of elector when vote challenged.

SEC. 1118. If any person offering to vote shall be challenged as unqualified by the judges or clerks of election, or by any one of the challengers selected for that purpose, the judges shall declare to the person so challenged the qualifications of voters. If such person shall then state himself duly qualified and the challenge be not withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear (or affirm) that you are over twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to become a citizen conformably to the laws of the United States on the subject of naturalization) and that you have taken an oath to support the constitution and government of the United States; that you have resided in this territory six months and in this county thirty days next preceding this election, and that you have not voted at this election." [S. L. 1886, ch. 18, § 2.]

Vote to be received when oath taken.

SEC. 1119. If any person so offering to vote shall take such oath, his vote shall be received, once and no more; and if such oath shall be knowingly false, the person taking it shall be deemed guilty of perjury, and shall upon conviction thereof, be punished under the law fixing a penalty for perjury. When any person's vote shall be received after having taken the oath prescribed in this chapter, it shall be the duty of the clerk of the election to write on the poll book, at the end of the name of such person, the word "sworn." [S. L. 1879, ch. 34, §§ 33 and 84.]

Who may administer oath.

SEC. 1120. The oath, in each case where challenge is given, may be administered by either of the judges of election, or by any officer, resident in the precinct or district, authorized by law to administer oaths. [S. L. 1879, ch. 34, § 77.]

Ballot box—Manner of protecting.

SEC. 1121. There shall be provided and kept by the judges of each election precinct, (at the expense of the county), a substantial ballot box, with a secure lock and key; there shall be one opening, and no more through the lid or corner of such box of sufficient size to admit a single folded ballot. Before any ballot shall be deposited in the ballot box, the ballot box shall be publicly opened and exhibited, and the judges and clerks shall see that no ballot is in such box; after which the box shall be locked and the key delivered to one of the judges to be designated by the others, and shall not again be opened until the close of the polls. The ballot box shall not be removed from the presence of judges or clerks of election, after locking said box as herein provided, until all the ballots shall be counted and poll lists made of all the names on said ballots, as provided by law. [S. L. 1879, ch. 34, § 34.]

Manner of receiving ballots—Judges and clerks to challenge.

SEC. 1122. When a ballot shall be received, one of the judges, without opening the same or permitting it to be opened or examined, shall deposit it in the ballot box. It shall be the duty of each judge or clerk of the election to challenge all persons whom he shall know or suspect as not being qualified voters. [S. L. 1879, ch. 34, § 35.]

How poll lists and ballot box kept during adjournment.

SEC. 1123. Each clerk shall keep a full list, which shall contain the names of all the persons voting at such election in their numerical order. In case of adjournment, each clerk shall keep his poll list, and the judges shall seal up the hole in the ballot box, one of the judges taking the box, and another the key; and if any judge or clerk of election, or other person shall open said box in any way, during such adjournment, he shall be deemed guilty of a misdemeanor, and punished, upon conviction thereof, with imprisonment in the county jail not less than three nor more than nine months. [S. L. 1879, ch. 34, § 36. S. L. 1882, ch. 52, § 1.]

Adjournments are prohibited by § 1108.

Manner of canvassing and returning votes—Form of certificate.

SEC. 1124. As soon as the polls of the election shall be closed the judges shall proceed immediately to canvass the vote given, and shall continue without adjournment until the canvass is completed. The canvass must commence by a comparison of the poll lists and they must be made to agree; the ballot box shall then be opened and the ballots counted by the judges and clerks, unopened, and if there are more ballots than names upon the poll list, the ballots must be returned to the box, shaken up, and one of the judges shall draw from such box ballots enough to make the remainder agree with the poll list, which ballots so drawn shall be destroyed, and two or more ballots being found so folded as to bear the appearance of having been voted by one person shall not be counted, but preserved with the poll books; the poll list and ballots being made to agree, the judges and clerks shall then proceed to count and ascertain the number of votes cast for each person named upon such ballots; when the votes shall have been examined and counted, the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such vote or votes and the number he did receive, the numbers being expressed in words at full length and also in figures, such entry to be made, as nearly as circumstances will admit, in the following form, to wit: "At an election held at the house of——in——precinct, in the county of———and Territory of Wyoming, on the———day of———, in the year of our Lord, one thousand eight hundred and———, the following named persons received the number of votes annexed to their respective names for the following described offices, to wit: ———had———votes for delegate to congress; ———had———votes for council; ———had———votes for house of representatives; ———had———votes for sheriff; ———had——— votes for county clerk; ———had———votes for probate judge and county treasurer; ———had———votes for county and prosecuting attorney; ——— had———votes for county commissioner; ———had———votes for county superintendent of schools; ———had———votes for coroner; ———had ———votes for surveyor; ———had———votes for assessor; ———had ———votes for justice of the peace; ———had———votes for constable: Certified by us, A, B, C, D, E, F, judges of election. Attest, G, H, I, J, clerks of election; and as soon as all the votes shall have been read off and counted, the judges or board of election shall make out a certificate under their hands as provided in this section. [S. L. 1879, ch. 34, § 37.]

Poll book, etc., to be returned to county clerk—Special messenger.

SEC. 1125. The judges of the election shall then enclose and seal one of the poll books together with the ballots, under cover, directed to the county clerk of the county in which such election is held, and the packet thus sealed shall be conveyed by one of the judges or clerks of election to be determined by lot if they cannot agree otherwise, and deliver to the postmaster at the nearest postoffice within forty-eight hours from the closing of the polls. The judges of the election shall retain the other poll book in their possession. If any judge or clerk of an election after having been deputed by the judges of the election at which he served as judge or clerk to carry the returns of such election to the postmaster at the nearest postoffice, shall fail or neglect to deliver said returns to the said postmaster and duly register the same, taking a receipt therefor, within the time prescribed by law, safe with the seal unbroken, he shall for every offense forfeit and pay the sum of five hundred dollars for the use of the county, to be recovered in the name of the commissioners of the county, by a civil action in any court of competent jurisdiction; *Provided*, That informality in the delivery of the returns, as described by this section, shall not invalidate the vote of any precinct. Should the returns from such election be not received by the county clerk within ten days of the time such election was held, then the county clerk may send a special messenger whose mileage and per diem shall be paid by the county commissioners as in other cases, and it shall be the duty of the judges of election to make out a certified copy of the poll book of such election in their possession, enclose and seal the same and deliver the same to said messenger. For any neglect or failure to perform his duty, said messenger shall be liable for the same fine imposed upon any judge or clerk for a like offense. [S. L. 1882, ch. 42, § 3.]

Disposition of ballots by county clerk.

SEC. 1126. All the ballots counted by the judges of election shall, after being read, be strung upon a strong thread or twine, in the order in which they have been read, and shall then be carefully enveloped and sealed up by the judges, who shall direct the same to the officer to whom by law they are required to return the poll books, and shall be delivered, together with the poll books, to such officer, who shall carefully preserve said ballots for six months, and at the expiration of that time shall destroy them by burning, without the package being previously opened; *Provided*, If any contest of election shall be pending at such time, in which such ballots may be required in evidence, the same shall not be destroyed till such contest is finally determined. [S. L. 1879, ch. 34, § 74.]

Canvass of returns by county clerk and justices—Certificates of election.

SEC. 1127. On the fifteenth day after the close of the election, or sooner, if all the returns be received, the county clerk of the county, taking to his assistance two justices of the peace of his county (one of whom shall be of a different political party from himself, if one can be found in his county), shall proceed to open said returns and make abstracts of the votes in the following manner: The abstract of votes for delegate to congress shall be in one sheet, and the abstract of votes for members of the council and house of representatives of the general assembly shall be on another sheet; and the abstract of votes for county officers shall be on another sheet; and it shall be the duty of the said county clerk of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for county officers respectively, and deliver such certificate to the person entitled to it, on his making application for that purpose to the county clerk at his office. [S. L. 1879, ch. 34, § 39.]

The vote of all precincts shall be counted, § 1135.

County clerk to make certificate for compensation of judges, etc.

SEC. 1128. It shall be the duty of the county clerk of each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges or clerks of such election may be entitled for services, and lay the same before the board of county commissioners at their next meeting; and the said board shall order the compensation aforesaid to be paid out of the county treasury. [S. L. 1879, ch. 34, § 40.]

For stated compensation of judges and clerks see § 1158.

Copy of abstract of votes to be sent to secretary.

SEC. 1129. The county clerk of the county, immediately after making out abstracts of the votes given in his county, shall make a copy of such abstract, and transmit the same by mail, or by some proper person or persons, to the office of the secretary of the territory. [S. L. 1879, ch. 34, § 41.]

When secretary to send messenger for returns.

SEC. 1130. If the returns of the election of any county in this territory, shall not be received at the office of the secretary of this territory within thirty days after the election, the said secretary shall forthwith send a messenger to the county clerk of such county, whose duty it shall be to furnish such messenger with a copy of such returns; and the said messenger shall be paid out of the territorial treasury the sum of five dollars per day and fifteen cents per mile for each mile he shall necessarily travel in going to and returning from the office of said clerk. [S. L. 1879, ch. 34 § 42.]

Territorial canvassing board and its duties—Penal provisions.

SEC. 1131. The secretary of the territory, auditor, treasurer, or any two of them, in the presence of the governor, shall proceed within thirty days after the election, and sooner, if all the returns be received, to canvass the vote given for all territorial officers and members of the council and house of representatives, and the governor shall give a certificate of such election to the persons having the highest number of votes for each office. In case there shall be no choice, by reason of any two or more persons having an equal number of votes for the same office, the governor shall call a special election in the manner provided by law. If any judge of the election, or clerk, or any other officer or person, in any manner concerned in conducting the election, shall wilfully neglect, improperly delay, or refuse to perform any of the duties required by this title, after having undertaken to perform such duties, he shall forfeit and pay to the territory the sum of one hundred dollars; and if any such judge of the election, clerk, or any other officer or person, in anywise concerned in conducting the election, shall knowingly admit any person to vote not qualified according to law, or shall knowingly receive and count more than one vote from one person at the same election, for the same office; or shall open or unfold any ballot when the same is presented to be deposited in the ballot box, or shall be guilty of fraud, corruption, or partiality, or manifest misbehavior, in any matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of five hundred dollars, to be recovered in any court of record in this territory, for the use of the county, in a civil action with costs of suit, or at the suit of any person who may sue for the same, one-half for the use of the person suing and the other half for the use of the county; and every such person so offending shall, on conviction, be rendered incapable of holding any office within this territory. [S. L. 1879, ch. 34, § 43.]

Refusing to receive vote—Penalty.

Sec. 1132. If any judge or judges of election shall refuse to receive the vote of any elector, who shall comply or offer to comply with the provisions of this title, then every judge or the judges so refusing or neglecting to receive the vote of the person aforesaid, and to record it as a legal vote, shall be liable to be indicted, and on conviction, be fined five hundred dollars, and imprisoned not exceeding thirty days. [S. L. 1879, ch. 34, § 44.]

Neglect of duty by county clerk—Penalty.

Sec. 1133. If the county clerk of any of the several counties of this territory shall neglect or refuse to perform any of the duties as such clerk, as specified in this title, he shall be liable to be indicted, and on conviction, shall be fined in a sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding thirty days. [S. L. 1879, ch. 34, § 45.]

Mutilating or stealing poll book—Penalty.

Sec. 1134. If any person shall mutilate or erase any name, figure or word in a poll book, taken or kept at any election, or if any person shall take away such poll book from the place where it has been deposited for safe keeping, with an intention to destroy the same, or to procure or prevent the election of any person; or if any person shall destroy any poll book so taken and kept at any election, he or she shall be liable to be indicted, and, on conviction, shall be fined not exceeding five hundred dollars, and imprisoned in the county jail not exceeding thirty days. [S. L. 1879, ch. 34, § 46.]

All precincts returned to be counted.

Sec. 1135. The county board of canvassers shall not throw out the vote of any precinct and the vote of every precinct returned to the county clerk shall be counted. [S. L. 1879, ch. 34, § 47.]

CHAPTER 3.

MANNER OF CONTESTING ELECTIONS.

SECTION.
1136. Contests in legislature.
1137. Other contests to be determined in district court.
1138. Who may contest election of legislator.
1139. Notice of legislative contests.
1140. Notice of taking depositions,
1141. Attendance of witnesses, etc., may be enforced.
1142. Manner of certifying and transmitting depositions.
1143. Secretary to deliver papers to presiding officer.
1144. Powers of legislature not abridged.
1145. Who may contest election of county and precinct officers.
SECTION.
1146. Statement to be filed with clerk of court.
1147. Notice of contest.
1148. Evidence, how taken.
1149. Trial, how conducted.
1150. Contest in matters submitted to vote of people—Procedure.
1151. When electors may defend contest.
1152. Judgment of court in contest cases.
1153. Tie votes, how determined in contests.
1154. Effect of certified copy of judgment.
1155. When election declared void.
1156. Appeals to supreme court.

Contests in legislature.

Sec. 1136. The council and house of representatives shall severally hear and determine contests of the election of their several members. [S. L. 1879, ch. 34, § 48.]

Other contests to be determined in district court.

SEC. 1137. The district courts of the several counties of this territory shall hear and determine contests of the election of all county, township, precinct and city officers, and also in regard to the removal of county seats and in regard to any other subject which may be by law submitted to the vote of the county. [S. L. 1879, ch. 34, § 49.]

Who may contest election of legislator.

SEC. 1138. The election of any member declared duly elected to a seat in the council or house of representatives in this territory may be contested by any qualified voter of the county or district to be represented by such member of the council or house of representatives. [S. L. 1879, ch. 34, § 50.]

Notice of legislative contest.

SEC. 1139. The contestant shall, within thirty days after the result of the election shall have been determined, serve on the person whose election he will contest, a notice of his intention to contest such election, expressing the points on which the same will be contested, and shall also, on or before the next session of the legislature, deliver a copy of such notice to the secretary of the territory; in case the person whose election is contested is absent or cannot be found, service may be had by leaving a copy of such notice at his usual place of residence, with some person of suitable age and discretion. [S. L. 1879, ch. 34, § 51.]

Notice of taking depositions.

SEC. 1140. Whenever a notice shall have been given of intention to contest an election, as provided in the preceding section, either party may proceed to take testimony of any witness before any judge, justice of the peace, clerk of a court, master in chancery, or notary public, on giving to the adverse party, or his attorney, ten days notice of the time and place of taking the same, and one day in addition thereto (Sunday inclusive) for every fifty miles travel from the place of residence of such party, to the place where such deposition is to be taken. If the party entitled to notice resided in the county where the deposition is to be taken, five days notice shall be sufficient. [S. L. 1879, ch. 34, § 52.]

Attendance of witnesses, etc., may be enforced.

SEC. 1141. The officer before whom depositions are taken, shall have power to compel the production of papers, and the attendance of witnesses; and the same proceedings may be had to compel the attendance of witnesses as are provided in the cases of taking depositions to be used in courts of law and equity. [S. L. 1879, ch. 34, § 53.]

Manner of certifying and transmitting depositions.

SEC. 1142. A copy of the notice to take depositions, with proof of the service thereof, with the deposition, shall be sealed up and transmitted by mail or otherwise, to the secretary of the territory, with an endorsement thereon, showing the names of the contesting parties, the office contested, and the nature of the papers. [S. L. 1879, ch. 34, § 54.]

Secretary to deliver papers to presiding officer.

SEC. 1143. The secretary of the territory shall deliver the copy of the notice deposited with him by the contestant, and the depositions unopened to the presiding officer of the branch of the legislature to which the contest relates, on or before the second day of its session next after the receipt of the same; and the presiding officer shall immediately give notice to his house that such papers are in his possession. [S. L. 1879, ch. 34, § 55.]

Powers of legislature not abridged.

SEC. 1144. Nothing herein contained shall be construed to abridge the right of either house of the legislature to grant commissions to take depositions, or to send for and examine any witnesses it may desire to hear on such trial, or to declare the right of membership to their respective houses. [S. L. 1879, ch. 34, § 56.]

Who may contest election of county and precinct officers.

SEC. 1145. The election of any person declared elected to any office other than member of the council or house of representatives, may be contested by any elector of the county, town, precinct, or city, in and for which the person is declared elected. [S. L. 1879, ch. 34, § 57.]

Statement to be filed with clerk of court.

SEC. 1146. The person desiring to contest such election shall, within thirty days after the person whose election is contested is declared elected, file with the clerk of the proper court a statement in writing, setting forth the points on which he will contest the election, which statement shall be verified by affidavit in the same manner as bills in chancery may be verified. [S. L. 1876, ch. 34, § 58.]

Notice of contest.

SEC. 1147. Upon the filing of such statement, subpœna shall issue against the person whose office is contested, and he may be served with process, or notified to appear in the same manner as is provided in cases of chancery. [S. L. 1879, ch. 34, § 59.]

Evidence, how taken.

SEC. 1148. Evidence may be taken in the same manner and upon like notice as in cases of chancery. [S. L. 1879, ch. 34, § 60.]

Trial, how conducted.

SEC. 1149. The cases shall be tried in like manner as in cases in chancery. [S. L. 1879, ch. 34, § 61.]

Contest in matters submitted to vote of people—Procedure.

SEC. 1150. Any five electors of the county may contest an election upon any subject which may by law be submitted to a vote of the people of the county, upon filing in the district court, within thirty days after the result of the election shall have been determined, a written statement in like form as in other cases of contested elections in the district court. The county shall be made defendant, and process shall be served as in suits against the county; and like proceedings shall be had as in other cases of contested elections before such court. [S. L. 1879, ch. 34, § 62.]

When electors may defend contest.

SEC. 1151. In case the county board shall fail or refuse properly to defend such contest, the court shall allow any one or more electors of the county to appear and defend, in which case the electors so defending shall be liable for the costs in case the judgment of the court shall be in favor of the contestant. [S. L. 1879, ch. 34, § 63.]

Judgment of court in contest cases.

SEC. 1152. The judgment of the court, in cases of contested elections, shall confirm or annul the election according to the right of the matter, or in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected. [S. L. 1879, ch. 34, § 64.]

Tie vote, how determined in contest.

SEC. 1153. If it appears that two or more persons have or would have had, if the legal ballots cast or intended to be cast for them had been counted, the highest and equal number of votes for the same office, the person receiving such votes shall decide by lot, in such manner as the court shall direct, which of them shall be declared duly elected, and the judgment shall be entered accordingly. [S. L. 1879, ch. 34, § 65.]

Effect of certified copy of judgment.

Sec. 1154. A certified copy of the judgment of the court shall have the same effect as to the result of the election as if it had been so declared by the canvassers. [S. L. 1879, ch. 34, § 66.]

When election declared void.

Sec. 1155. When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualifications on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void. [S. L. 1879, ch. 34, § 67.]

Appeals to supreme court.

Sec. 1156. In all cases of contested elections in the district courts, appeals may be taken to the supreme court in the same manner, and upon like conditions as is provided by law for making appeals in cases in chancery from the district courts. [S. L. 1879, ch. 34, § 68.]

CHAPTER 4.

MISCELLANEOUS PROVISIONS.

SECTION.
1157. Precincts to be furnished with ballot boxes, etc.
1158. Compensation of judges and clerks—Judges to retain duplicate of returns.
1159. Unlawful voting—Penalty.
1160 Certain election offenses defined.
1161. Working for hire at election prohibited.
1162. Bringing unqualified voters into county prohibited.
1163. Stuffing ballot box—Penalty.
1164. Stuffing ballot box by judge of election—Penalty.
1165. Officer revealing how elector voted—Penalty.
1166. Publishing vote of elector—Penalty.

SECTION.
1167. Offenses by clerks of election.
1168. Failure to deliver poll books to postmaster—Penalty.
1169. Fraud in canvassing votes—Penalty.
1170. Resignation to whom made.
1171. How elective offices become vacant.
1172. When vacancy exists, how determined.
1173. Vacancy in legislature how filled.
1174. Vacancy in office of delegate to congress—Special election.
1175. Vacancy in county or precinct offices, how filled.
1176. How election conducted, when officer fails to give required notice.
1177. Application of this title.

Precincts to be furnished with ballot boxes, etc.

Sec. 1157. The county clerk shall provide at the expense of the county, proper ballot-boxes, blanks, poll books, and other necessary election blanks, also the election laws of Wyoming Territory, for each precinct and district in his county, and cause a suitable number thereof to be delivered to the judges of election of each precinct at least ten days before any election is to be held within his county, except as otherwise provided in this title. [S. L. 1879, ch. 34, § 69.]

Compensation of judges and clerks—Judges to retain duplicate of returns.

Sec. 1158. The judges and clerks of election shall receive five dollars each per day for their services in attending such election, and the judge or clerk who carries the said return to the postmaster at the nearest postoffice shall also receive ten cents per mile each way by the nearest travelled route unless he has to travel in another way than by railroad. Then ten cents per mile each way and five dollars per day for each day necessarily and actually employed in such service; also the amount expended for postage and registration fee upon said returns. The judges of election shall retain duplicates of their returns and hold the same until after the canvassing of the votes by the canvassers, and such duplicates shall be sworn to. [S. L. 1879, ch. 34, § 75. S. L. 1882, ch. 42, § 4.]

Unlawful voting—Penalty.

Sec. 1159. Whoever unlawfully votes more than once at any election; or offers to vote after having voted at such election, or knowing that he or she is not a qualified voter at an election, wilfully votes at such election, shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court. [S. L. 1879, ch. 34, § 79.]

Certain election offenses defined.

SEC. 1160. Whoever wilfully aids and abets any one not legally qualified to vote at an election, in voting or attempting to vote at such election; or

Second—Furnishes an elector with a ticket or ballot, informing him that it contains a name different from that which appears thereon, with intent to induce him to vote contrary to his inclinations; or,

Third—Fraudulently or deceitfully changes a ballot of an elector, with intent to deprive such elector of voting for such person as he intended; or,

Fourth—Endeavors to procure the vote of any elector, or the influence of any person over an elector at any election, for himself for or against any person, by means of a promise of a favor, or by means of violence or threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or his means; or,

Fifth—By offering a reward or bribe, or by treating to, or giving spirituous, malt, or other liquor, either directly or indirectly, influences or attempts to influence any voter in giving or withholding his or her vote at an election; or,

Sixth—By bribery or by corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at an election; or,

Seventh—Gives or offers to give any valuable thing or bribe to any judge or clerk of election, as a consideration for some act to be done, or omitted to be done, contrary to his official duty, in relation to such election, shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year, or both, in the discretion of the court. [S. L. 1879, ch. 34, § 80.]

Working for hire at election prohibited.

SEC. 1161. If any person shall employ or hire, or pay for or promise to pay for, the services of any one employed for hire, or for promise of any fee or reward, in and about aiding in the election of any person to any office under the laws or this territory, or in the defeat or carrying of any proposition submitted as aforesaid, or shall contribute any money or valuable thing, or promise to aid in procuring any office, place or appointment, under the laws of this territory, to or for the use and benefit of any person, for and in consideration of any such services as in this section above mentioned, every person so offending shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned in the county jail not exceeding thirty days. Whoever receives, requests, or demands a bribe or reward forbidden by this chapter to be given, shall be liable to the same penalties as are prescribed in this chapter for giving such bribe or reward. [S. L. 1879, ch. 34, § 81.]

Bringing unqualified voters into county prohibited.

SEC. 1162. Any person who shall procure, aid, assist or advise another to go into any county for the purpose of giving his vote therein, knowing that such other person is not qualified to vote in such county, shall, on conviction thereof, be fined in a sum not exceeding one hundred dollars. [S. L. 1879, ch. 34, § 82.]

Stuffing ballot box—Penalty.

SEC. 1163. Any person who shall, after the opening of the polls, fraudulently put a ballot or ballots, or ticket or tickets. into the ballot box, shall, on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than one year, nor more than three years. [C. L. 1879, ch. 34, § 83.]

Stuffing ballot box by judge of election—Penalty.

SEC. 1164. Any judge of election who shall, after the opening of the polls, put a ballot or ticket into the ballot box, except his own, or such as may be received in the regular discharge of his duty, shall, on conviction thereof, be imprisoned in the penitentiary, and kept at hard labor not less than five years, nor more than ten years. [S. L. 1879, ch. 34, § 85.]

Officer revealing how elector voted—Penalty.

SEC. 1165. If any judge or clerk of election shall wilfully or corruptly ascertain by comparison of the poll book with the ballot, or shall allow any other person to ascertain by such comparison or otherwise, or shall wilfully publish or reveal how any elector voted at an election, he shall, on conviction thereof, be fined in a sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding thirty days. [S. L. 1879, ch. 34, § 86.]

Publishing vote of elector—Penalty.

SEC. 1166. If any person shall wilfully or corruptly ascertain or publish, or reveal how any elector voted at an election, he shall, on conviction thereof, be fined in a sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding thirty days. [S. L. 1879, ch. 34, § 87..]

Offenses by clerks of election.

SEC. 1167. If any clerk of an election shall wilfully neglect to perform any duty required of him as clerk of election, or shall be guilty of fraud, corruption or misbehavior as such clerk, he shall, on conviction thereof, be fined in a sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding thirty days. [S. L. 1879, ch. 34, § 88.]

Failure to deliver poll books to postmaster—Penalty.

SEC. 1168. If any judge, clerk or other person, after having been deputed by the judges of election to carry the poll books, poll list or lists, and ballots of such election to the postmaster at the nearest postoffice, wilfully, or negligently fails to deliver such poll books, poll list or lists, or ballots, within the time prescribed by law, with the seal unbroken, he shall, upon conviction, be fined in a sum not exceeding five hundred dollars, and imprisonment in the county jail not exceeding thirty days. [S. L. 1879, ch. 34, § 89. S. L. 1882, ch. 42, § 5.]

Fraud in canvassing votes—Penalty.

SEC. 1169. If any county clerk or justice of the peace shall be guilty of any fraud, corruption or misbehavior in canvassing the votes or making any abstract of votes, or issuing any certificate of election, he shall, on conviction, be fined in any sum not exceeding five hundred dollars and be imprisoned in the territorial penitentiary not exceeding one year. [S. L. 1879, ch. 34, § 90.]

Resignations, to whom made.

SEC. 1170. Resignation of elective officers shall be made to the officer, court or county board authorized by law to fill a vacancy in such office by appointment, or to order an election to fill such vacancy. [S. L. 1879, ch. 34, § 91.]

How elective offices become vacant.

SEC. 1171. Every elective office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

First—The death of the incumbent;

Second—His resignation;

Third—His coming insane;

Fourth—His ceasing to be an inhabitant of the territory, or, if the office is local, his ceasing to be an inhabitant of the district, town or precinct for which he was elected;

Fifth—His conviction of an infamous crime or of any offense involving a violation of official oath;

Sixth—His removal from office;

Seventh—His refusal or neglect to take his oath of office or to give or renew his official bond, or to deposit or file such oath or bond within the time prescribed by law;

Eighth—The decision of a competent tribunal declaring his election void. [S. L. 1879, ch. 34, § 92.]

When vacancy exists, how determined.

SEC. 1172. Whenever it is alleged that a vacancy in any office exists, the officer, court or county board, whose duty it is to fill the vacancy by appointment or to order an election to fill such vacancy, shall have power to determine whether or not the facts occasioning such vacancy exist. [S. L. 1879, ch. 34, § 93.]

Vacancy in legislature, how filled.

SEC. 1173. Whenever a vacancy shall occur in the office of any member of council or house of representatives, it shall be the duty of the county clerk of the county or counties in which the member whose office is vacant resided, to immediately notify the governor of such vacancy, whereupon the governor shall issue a writ of election to the county clerk or clerks, of the county or counties in which the vacancy is to be filled, fixing the day agreed upon by the board of county commissioners of the county or counties upon which an election shall be held to fill such vacancy; but unless the legislature shall be in session at the time the vacancy occurs, or there shall be a session between the time at which the vacancy occurs and the next general election, no special election shall be ordered to fill such vacancy. [S. L. 1879, ch. 34, § 94.]

For special election to fill vacancy in legislature, see §§ 1093-1095.

Vacancy in office of delegate to congress—Special election.

SEC. 1174. When any vacancy shall occur in the office of delegate to congress from this territory, the governor shall issue a writ of election to the county clerks of the several counties, appointing a day to hold a special election to fill such vacancy. [S. L. 1879, ch. 34, § 95.]

Vacancy in county or precinct offices, how filled.

SEC. 1175. When a vacancy shall occur in the office of sheriff, county clerk, probate judge, county treasurer, county and prosecuting attorney, or county commissioner, within one year before the expiration of the term of such vacant offices, the vacancy shall be filled by appointment by the board of county commissioners of the county in which the vacancy exists; but if such unexpired term exceeds one year, the board of county commissioners of such county shall issue an order, which order shall be countersigned by the clerk of the board of county commissioners, appointing a day for an election to fill such vacancy, and cause notice thereof to be given as in other cases of election. And when a vacancy shall occur in the office of superintendent of schools, coroner, surveyor, assessor, justice of the peace, constable, or other county or precinct officer, any such vacancy shall be filled by appointment by the board of county commissioners of the county where such vacancy exists. [S. L. 1884, ch. 41, § 1.]

How election conducted where officer fails to give required notice.

SEC. 1176. In the event of the board of county commissioners, sheriff, county clerk, or other officer, whose duty it is to establish or appoint voting precincts and judges of election or serve notices, shall fail to do any thing, the omission of which might invalidate an election, it shall be lawful for the electors of any community of twenty or more electors to make proclamation of an election, on any election day; and hold such election at some central place so proclaimed by the electors present, as the place for holding election, and they may then proceed to elect judges and clerks of election, and in all things as far as practicable conform to the election laws. And all such acts and proceedings shall have the same force and effect as if regularly done as hereinbefore provided; *Provided*, That this section shall not apply to proposed precincts, where affidavits have not been filed, showing there are more than twenty legal voters. [S. L. 1879, ch. 34, § 97.]

Application of this title.

Sec. 1177. The foregoing provisions shall apply, as far as practicable, to all elections in the territory, whether general, special, local or municipal. [S. L. 1879, ch. 34, § 98.]

TITLE 12. FEES AND SALARIES.

CHAPTER 1. FEES OF TERRITORIAL SECRETARY.
CHAPTER 2. COMPENSATION AND FEES OF COUNTY AND PRECINCT OFFICERS.

CHAPTER 1.

FEES OF TERRITORIAL SECRETARY.

SECTION.
1178. Enumeration of fees allowed.
1179. When fees may be charged.
1180. Secretary to furnish certified copies.

Enumeration of fees allowed.

SEC. 1178. For the services hereinafter specified there shall be allowed and paid to the secretary of the territory by the party for whom the same are rendered the following fees namely: For certificate and seal, one dollar; for seal and signature without certificate fifty cents; for filing and approving bond, one dollar; for issuing commission to notary public, three dollars; for receiving and filing each certificate of incorporation, one dollar; for recording each instrument of writing for the first folio of one hundred words, one dollar, and for each subsequent folio, fifteen cents; for filing each paper other than certificate of incorporation, fifteen cents; for copy of any law or document recorded or filed in the office of the secretary, per folio, fifteen cents; for each commission issued to commissioner of deeds, five dollars. [S. L. 1882, ch. 95, § 1.]

When fees may be charged.

SEC. 1179. The foregoing fees shall be paid only when the services for which the same are charged, are imposed by the laws of this territory. [S. L. 1882, ch. 95, § 2.]

Secretary to furnish certified copies.

SEC. 1180. It shall be the duty of the secretary of the territory to furnish to any party applying therefor certified copies of any law paper or record in his office upon payment of the legal fees therefor as hereinbefore prescribed. [S. L. 1882, ch. 95, § 3.]

CHAPTER 2.

COMPENSATION AND FEES OF COUNTY AND PRECINCT OFFICERS.

SECTION.
1181. Limitation upon compensation of officers.
1182. Salary and fees of sheriff.
1183. Traveling expenses of sheriff.
1184. Salary and fees of clerk and ex-officio register.
1185. Fees of clerk of supreme court.
1186. Fees of clerks of district court.
1187. Fees of probate judge.
1188. Fees of county treasurer.
1189. Salary and fees of justices of the peace.
1190. Fees of notaries public.
1191. Compensation of assessor.
1192. Fees of coroner.
1193. Fees of surveyor.
1194. Salary of county and prosecuting attorney.
1195. Compensation of county commissioners.
1196. Compensation of superintendent of schools
1197. Fees of triers.
1198. Fees of constables.
1199. Fees of witnesses.
1200. Fees of physician testifying as expert.
1201. Certificate of physician's fees on post mortem examination.
1202. Fees of interpreters.
1203. Fees of jurors in justice's court.
1204. Justice may be paid salary in lieu of certain fees.
1205. Salary of justice for Ft. Laramie precinct.
SECTION.
1206. Limitation upon fees of jurors in district court.
1207. Mileage of jurors in district court.
1208. Per diem of jurors in district court.
1209. Clerk of court to issue certificates to jurors.
1210. Fees in criminal cases, by whom paid.
1211. Clerk to keep record of attendance of jurors and witnesses.
1212. Clerk to make statement of attendance to commissioners.
1213. Witnesses demanded at one time to be named in one writ.
1214. Limitation on fees for attaching official seals.
1215. Limitation upon allowances for mileage.
1216. No fees allowed for constructive service.
1217. Limitation on per diem compensation.
1218. Court officers not allowed witness fees.
1219. Fee list to be posted in certain offices.
1220. Officer's return to show fees claimed.
1221. Certified bill of costs to be made on application.
1222. Justice to certify costs in criminal cases.
1223. Disposition of costs collected.
1224. "Folio" defined.
1225. When and by whom fees payable.
1226. How population determined in regulating salaries, etc.

Limitation upon compensation of officers.

SEC. 1181. The persons and officers herein mentioned, shall be entitled to receive for their services the compensation and fees herein allowed and none other, except as otherwise expressly provided by law. [S. L. 1882, ch. 45, § 1.]

Salary and fees of sheriff.

SEC. 1182. There shall be allowed and paid to the sheriffs of the several counties the salaries and allowances as follows: In counties having five thousand inhabitants or population or less, an annual salary of three thousand dollars, and to one deputy or under sheriff an annual salary of one thousand two hundred dollars; *Provided*, That should the sheriff find it necessary to employ more than one deputy or under sheriff he may do so, but in such case the total annual salaries paid all such deputies or under sheriffs shall not exceed one thousand two hundred dollars; this provision shall apply to counties without reference to population. In counties having more than five thousand inhabitants or population there shall be allowed and paid to the sheriff an annual salary of three thousand dollars and an additional sum of two hundred and fifty dollars for every five hundred inhabitants or population in excess of five thousand, and there shall also be allowed and paid to one deputy or under sheriff an annual salary of one thousand two hundred dollars; such salaries shall be paid quarterly by warrants issued as provided by law, by the proper authorities of the county for which such sheriff or deputy or under sheriff renders service as such, and shall be full compensation for all services rendered except as herein otherwise provided.

Sheriffs shall have charge of the jails in their respective counties and of the prisoners therein confined, and shall be paid sixty cents per day for the keeping, boarding and maintenance of each prisoner lawfully confined in such jail by the public authorities of the territory, for the time such prisoner is actually kept, boarded and maintained therein; and all bills for the keeping, boarding and maintenance of such prisoners shall be proved, audited, allowed and paid in the same manner as other bills against the county. He shall not be charged rent for any building owned by the county and occupied by him as a residence. In addition to the salary hereinbefore provided for sheriffs they shall be entitled to receive from the party for whom the services are rendered in civil cases the following fees which must in all cases be paid in advance if demand be made therefor: Serving and returning any writ, process, order or notice, except as hereinafter otherwise provided, for the first person one dollar, and for each additional person twenty-five cents; for every mile actually and necessarily traveled in going and returning to serve process, fifteen cents; taking bail or security, one dollar; serving order of attachment, order of arrest, order for the delivery of property or injunction order, one dollar and fifty cents; executing writ of possession, three dollars; making levy under execution or any other process where a levy is required, one dollar; making return where no property is found, twenty-five cents; making return of not found, each person, ten cents; commission on moneys collected on execution or other final process where the same is collected without a sale of property, for the first five hundred dollars, two per cent; for the second five hundred dollars, one per cent; for all over one thousand dollars, one half of one per cent; where collection is made upon a sale of the property, the commissions allowed shall be as follows, on the first five hundred dollars, four per cent; on the second five hundred dollars, two per cent; on all over one thousand dollars, one per cent; for advertising property for sale, one dollar and fifty cents; for executing deed when necessary to be made by sheriff upon sale of any real property (including acknowledgment), five dollars; for summoning each juror, twenty-five cents; for summoning each talesman juror, fifteen cents; for executing writ of *habeas corpus*, one dollar; for executing order of commitment, one dollar. In any case where in the execution of his duties it shall become necessary for any sheriff to take, store or keep, maintain or subsist any property he shall be entitled to receive a reasonable allowance to cover all the actual and necessary expenses of so taking, storing, keeping, maintaining or subsisting the same, such allowance shall be made and fixed by the proper court or a judge thereof upon affidavit made by such sheriff or his deputy or under sheriff, showing in detail all items of such expenses, and that the same was actually and necessarily incurred in the execution of his duties in the particular case, and such court or judge may require other and further evidence to sustain the claim before allowing the same. When a sheriff or any other person as the agent of the territory, executes any requisition issued by the governor of this territory for the reclamation of any fugitive from justice, there shall be allowed and paid for such service by the county where such fugitive is required for trial, the sum of five dollars per day for the time actually and necessarily employed in going after and returning such fugitive, together with all actual and necessary expenses of such service to be shown by the affidavit of the person performing such service. The foregoing fees and compensation for services in executing a requisition issued by the governor of this territory, shall be paid in all cases where such services have heretofore been rendered, by the county to which the fugitive from justice was returned, or was returnable for trial; *Provided*, No payment has already been made therefor; *And provided*, *further*, That hereafter no compensation shall be allowed to any agent or other person for executing a requisition unless such requisition was obtained upon the advice or request of the prosecuting attorney, or the board of county commissioners of the county where the fugitive is to be returned for trial. [S. L. 1882, ch. 45, § 2.]

Traveling expenses of sheriff.

SEC. 1183. The sheriff of each county shall, in addition to the fees and salaries now allowed by law, receive his actual and necessary traveling expenses while in the discharge of his duties; *Provided*, That such traveling expenses shall not be allowed in cases when the sheriff receives mileage provided for by law. [S. L. 1886, ch. 66, § 1.]

Salary and fees of clerk and ex-officio register.

SEC. 1184. There shall be allowed and paid to the county clerks of the several counties in this territory salaries and fees as follows: In counties having not more than five thousand inhabitants or population, an annual salary of one thousand five hundred dollars; in counties having more than five thousand inhabitants or population there shall be allowed and paid to the county clerks thereof an additional sum of two hundred and fifty dollars per annum for each five hundred inhabitants or population over five thousand; such salaries shall be payable quarterly by the proper county in the manner required by law, and shall be full payment for all services rendered as county clerk, but as ex-officio register of deeds he shall be entitled to, and for his own benefit shall receive from the party or parties requesting the services to be rendered, the following fees for the services hereinfter named, to wit: For recording any deed, mortgage or other instrument, when said instrument contains less than one hundred words, one dollar, and when such instrument contains more than one hundred words he shall receive for recording such instrument one dollar for the first one hundred words and fifteen cents for each subsequent hundred words contained therein; for each entry in index or receiving book five cents; for abstracting deed twenty-five cents, when required to make five entries or less in abstract record, for each additional entry five cents; for furnishing abstract (including certificate and seal) where said abstract contains five conveyances or less, two dollars; for each additional conveyance or entry fifteen cents; for making search of records, where no certificate is given, twenty-five cents; copies of record, per one hundred words, fifteen cents; for each certificate and seal, fifty cents; for every certificate of magistracy, under seal, fifty cents; taking acknowledgment, fifty cents for first person and twenty-five cents for each additional person; for releasing mortgage or other lien on records fifty cents; for issuing and recording marriage licenses three dollars; for approving bond or undertaking, including justification, seventy-five cents; for filing each paper required by law to be filed, but not recorded, fifty cents. [S. L. 1882, ch. 45, § 3.]

Fees of clerk of supreme court.

SEC. 1185. The clerk af the supreme court shall be allowed and paid the following fees for his services: For docketing each action or suit, civil or criminal, one dollar; for issuing writ of error, summons or other writ, one dollar; for indexing action, twenty-five cents: for entering appearance of attorney, twenty-five cents; for filing each paper, ten cents; for entering final judgment or decree in a cause or suit, one dollar; for entering ruling, order or judgment on motion, twenty-five cents; for entering any order, judgment or decree except as mentioned in the last two clauses herein, twenty-five cents; for recording papers, fifteen cents per folio; for making complete record per folio, fifteen cents; for taking acknowledgment, fifty cents for one person and twenty-five cents for each additional person; for taking depositions, the same fees as are herein allowed to notary public for the same service; for all services upon proceedings by an alien upon his declaration of intention to become a citizen, including issuing of proper certificate, two dollars; for all services upon an alien becoming a citizen, including certificate to the person applying, two dollars and fifty cents; for making and recording certificate of appointment of United States commissioner, one dollar; for making up bill of costs, twenty-five cents; for each certificate and seal, fifty cents; for each certificate of admission of an attorney to practice in said court, three dollars. [S. L. 1882, ch. 45, § 4.]

Fees of clerks of district court.

SEC. 1186. The clerks of the district courts shall be entitled to receive for their services the following fees: Indexing case, twenty-five cents; entering action on appearance docket, twenty-five cents; entering action on trial docket, twenty-five cents; entering action on bar docket, twenty-five cents; for filing each paper required to be filed, ten cents; for every writ, summons or other process not herein expressly named and sealing the same, one dollar; for each subpœna (all names furnished in one precipe to be included in same subpœna, unless otherwise directed), forty cents; approving bond or undertaking, including justification, one dollar; taking and certifying affidavit, fifty cents; entering sheriff's return on venire, fifty cents; entering sheriff's return on writ, summons or other process (except venire) fifteen cents per folio; issuing commissions to take depositions, one dollar; entering appearance for defendant, fifteen cents; calling jury and entering appearance on journal, fifty cents; impanelling and swearing jury, fifty cents; every issue joined, fifty cents; for swearing each talesman, witness or bailiff in court, ten cents; taking and entering recognizance in court, fifty cents; for entering each order, rule or plea on journal, forty cents; where such order, rule or plea contains more than two hundred words, fifteen cents for each additional hundred words; entering verdict, twenty-five cents; entering judgment not exceeding four folios, fifty cents; docketing judgment on execution, fifty cents; entering satisfaction of judgment, twenty-five cents; making any record required to be made, or copying any record or paper per folio, where no fee is allowed, fifteen cents; certificate and seal, fifty cents; taxation of costs, twenty-five cents; each entry on appearance docket, other than docketing action, ten cents; each entry on index, five cents; bringing a particular record into court, twenty-five cents; taking depositions per folio, twenty-five cents; administering oath in court, ten cents; for each attachment for a witness or other person, seventy-five cents; for taking acknowledgment of deed, power of attorney or other instrument and certifying and sealing the same, fifty cents for the first person and twenty-five cents for each additional person; for arraigning prisoners at the bar, forty cents; for filing, recording and issuing certificate of intent to become a citizen of the United States, two dollars; for final naturalization, including oath and record, and issuing certificate, two dollars and fifty cents; for assessing damages on any bond, note or other instrument for the payment of money, by order of the court, and making a final report thereof, and filing said report, sixty cents; for issuing venire, seventy-five cents; for issuing certificate of compensation to witness, juror or trier (including seal), twenty cents; for receiving, keeping and paying out money in pursuance of law, or of any decree or order of court for any amount not exceeding one hundred dollars two per cent., for any amount over one hundred dollars one per cent; entering defendant's confession, fifty cents; certifying record of supreme court, one dollar. [S. L. 1882, ch. 45, § 5.]

Fees of probate judge.

SEC. 1187. The probate judge of each county shall receive for his services the following fees: For appointing an executor, administrator, guardian, or trustee and certifying same, if contested three dollars, if not contested two dollars; for granting letters testamentary of administration, guardianship or trusteeship and affixing seal thereto, one dollar and fifty cents; taking bond of executor, administrator, guardian or trustee and approving the same, one dollar; for administering oath to each executor, administrator, guardian or trustee, twenty-five cents; for taking proof of will or codicil when contested, five dollars, when not contested, two dollars and fifty cents; for recording any will, codicil or other paper, for each one hundred words fifteen cents; for recording letters testamentary or of administration, guardianship or trusteeship each one hundred words fifteen cents; for examining inventory for each one hundred words, ten cents; for examining appraisement for each one hundred words, ten cents: for examining bill of sale, account current filed by an executor, administrator, guardian or trustee for each one hundred words, ten cents; for entering the settlement of executor, administrator, guardian or trustee for each one hundred words, fifteen cents; for all copies of orders, papers and proceedings, fifteen cents per folio of one hundred words; for each order of distribution, one dollar and fifty cents; for exemplified copies of records per folio of one hundred words, fifteen cents; for making order of publication of any notice, one dollar; allowing appeal to district court, one dollar; issuing each writ, summons or citation, seventy-five cents; administering oath and certificate thereof, fifty cents; administrating oath to witness, ten cents; issuing subpœnas, twenty-five cents; entering each order, decree or judgment not herein enumerated, fifty cents; filing any paper pertaining to any estate, ten cents; for taking and approving any bond not hereinbefore specified, one dollar; for revoking letters testamentary or of administration, guardianship or trusteeship, one dollar; administering oath to jury, fifty cents; taking acknowledgment of any kind, fifty cents; issuing venire for jury, seventy-five cents; entering verdict, fifty cents; allowing or disallowing demands against an estate, twenty-five cents each; disallowing application for letters of administration, guardianship or trusteeship, one dollar; decree for settling an estate, two dollars and fifty cents; for hearing complaint, petition or action, one dollar; for hearing and entering every motion, fifty cents; for entering order of continuance, fifty cents; warrant to appraise and divide an estate, seventy-five cents; ordering an allowance to widows or minors, seventy-five cents; for making and entering each order or decree for the sale or partition of real estate, one dollar; for granting reference of accounts, one dollar; for proportioning insolvent estate, three dollars; for extending the time for selling an estate, one dollar and fifty cents; for ordering and drawing quietus, two dollars; for solemnizing marriage, five dollars; for each trial or hearing of a cause instituted in the probate court for each day occupied by him in such hearing or trial to be taxed as costs in the case, five dollars; for hearing each contested claim against estate and entering decision in same, one dollar; for each hearing or application to revoke letters testamentary or of administration, guardianship or trusteeship to be taxed against the losing party, one dollar; for recording assignments for the benefit of creditors for each one hundred words, fifteen cents; examining inventory filed by assignee for each one hundred words, ten cents; for taking bond of assignee and approving the same, one dollar; for examining the accounts of assignee for each one hundred words, ten cents; for each order requiring assignees to distribute funds in their hands, one dollar and fifty cents; for discharging assignee for any cause, one dollar; for appointing an assignee in place of assignee discharged, two dollars; filing any paper pertaining to any assignment, ten cents; decree for settling an assigneeship, two dollars and fifty cents; and for all other services rendered in the matter of assignments not hereinbefore provided the probate judge shall receive such compensation as he is entitled to for similar services rendered by him under the law relating to executors, administrators, guardians and trustees. [S. L. 1882, ch. 45, § 6.]

Fees of county treasurer.

SEC. 1188. The county treasurer shall hereafter be the collector of taxes in his county, and for his services in collecting the taxes he shall be entitled to the following fees: For any amount collected from one tax-payer not exceeding five dollars, twenty per centum thereon; for any amount collected from one tax-payer over five dollars, and not exceeding ten dollars fifteen per centum thereon; for any amount collected from one tax-payer over ten dollars and not exceeding fifty dollars ten per centum thereon; for any amount collected from one tax-payer over fifty dollars and not exceeding one hundred dollars five per centum thereon; for any amount over one hundred dollars and not exceeding five hundred dollars three per centum thereon; for any amount over five hundred dollars and not exceeding one thousand dollars two per centum thereon; for any amount over one thousand dollars and not exceeding five thousand dollars, one per centum thereon; for any amount over five thousand dollars, one-half of one per centum thereon; *Provided*, That the whole amount received by the treasurer for the collection of taxes shall not exceed one thousand five hundred dollars in any one year. The county treasurer shall also be entitled to receive two per centum thereon for all moneys actually paid out by him as required by law, except upon such sum or sums as are turned over to his successor. [S. L. 1882, ch. 45, § 7.]

Salary and fees of justices of the peace.

SEC. 1189. Justices of the peace shall be entitled to receive the following compensation and fees: In precincts where the population thereof exceeds two thousand and does not exceed three thousand they shall be paid a salary of fifty dollars per month for all services rendered in criminal causes. In precincts where the population exceeds three thousand they shall be paid a salary of seventy-five dollars per month. In all cases where a salary is provided for a justice of the peace no fee shall be paid him for any services rendered in a criminal cause; but the same fees shall be allowed and paid to such justice of the peace in civil causes as are hereinafter specified. Justices of the peace in precincts where no salary is allowed and payable, shall be allowed and paid for all services rendered in civil and criminal causes the fees hereinafter specified, and justices of the peace in precincts where a salary is paid shall be entitled to the the fees in civil causes as hereinafter specified, but all fees in justice's courts in civil business or causes shall be paid by the parties for whom the services are rendered, to-wit: For making entry upon justice's docket, required by law and not herein otherwise provided for, fifteen cents; for entering any order of dismissal, of adjournment, of continuance, of summons for a jury or other order per folio of one hundred words, fifteen cents; for entering any judgment or satisfaction thereof, or transfer of judgment per folio, fifteen cents; for taking acknowledgment of deed or other instrument of writing fifty cents for one person and twenty-five cents for each additional person acknowledging the execution of the same instrument; for filing each paper ten cents; for approving bond and undertaking, fifty cents; for administering each oath, ten cents; for trial before justice or jury, one dollar; for issuing any writ, order or process requiring service, except a subpœna, fifty cents; for issuing subpœna, twenty-five cents; all names included in one precipe shall be put in one subpœna unless the party otherwise request. For rendering and entering the final judgment in a cause upon the merits thereof fifty cents; for taking affidavit, twenty-five cents; for each criminal complaint, one dollar; for each criminal warrant, one dollar; for each preliminary examination upon a charge of felony, one dollar and fifty cents; for each preliminary examination upon a charge of misdemeanor, one dollar; for each trial of a charge of misdemeanor, one dollar; for taxing costs, twenty-five cents; for certifying appeal and sending appeal papers to district court, one dollar and fifty cents; in all cases where any person shall be arrested charged with any offense, and the court upon hearing or trial thereof shall be of the opinion that there was not probable cause for causing such arrest, and that the complaint was maliciously made, it shall tax the costs of the proceeding to the prosecuting witness, and render judgment therefor against him, which shall be collected in the same manner as other judgments. No more than fifteen dollars justices' costs shall be charged in any criminal cause. For performing marriage ceremony and making return thereof the justice of the peace shall receive five dollars; for transmitting papers on change of venue, fifty cents, also for certificate of justice twenty-five cents, also taking answers of garnishee including affidavit, fifty cents; for issuing writ of restitution, one dollar; also for issuing attachment for contempt, fifty cents. [S. L. 1882, ch. 45, § 11.]

Fees of notaries public.

SEC. 1190. Notaries public shall be entitled to receive the following fees from the persons for whom the service is rendered: For any protest of bill of exchange, check, draft, promissory note or other negotiable instrument where protest is made at the request of any party, one dollar; for each notice of protest, fifty cents; for certificate and seal, fifty cents; for administering oath or affirmation, fifty cents; for taking acknowledgment of deed of one person fifty cents, and twenty-five cents for each additional person; for taking depositions, fifteen cents per folio, and five dollars for all other services in taking, certifying, directing, endorsing and transmitting the same. [C. L. 1882, ch. 45, § 12.]

Compensation of assessor.

SEC. 1191. The assessor of each county shall receive for his services an annual salary of five hundred dollars, and in addition thereto an amount equal to one-fourth of one mill per centum upon the equalized value of all property actually assessed by him; *Provided*, The assessor or his deputy shall be paid his actual and necessary expenses of travel in making the assessment, which account of expenses before being allowed shall be made out in separate items, and must be shown by affidavit to have been actually paid, to be just and correct and in addition thereto must be accompanied by a receipted voucher for each item of expenditure claimed. [S. L. 1882, ch. 45, §§ 13 and 15.]

Fees of coroner.

SEC. 1192. The coroner of each county shall receive for holding an inquest six dollars per day for each day necessarily and actually employed; for each mile actually and necessarily traveled in going to and returning from place of inquest by nearest practicable route, fifteen cents; for performing the duties of sheriff when the sheriff is a party to any cause or proceeding, the same fees as the sheriff is allowed. [S. L. 1882, ch. 45, § 16,]

Fees of surveyor.

SEC. 1193. The county surveyor shall receive eight dollars per day for the time actually and necessarily employed in going from his office to place where a survey is to made, making the survey and returning to his office to be paid by the party at whose instance such surveying is done. He shall also be entitled to the following fees: For copy of plat or certificate of survey, five dollars; for making out complete report of any survey made by authority of the county commissioners, five dollars; for recording survey, per folio, fifty cents; all expense and compensation of chainmen, axemen and other necessary assistance shall be furnished by the person or party for whom the surveying is done. [S. L. 1882, ch. 45, § 17.]

Salary of county and prosecuting attorney.

SEC. 1194. The county and prosecuting attorney of the several counties shall be allowed by the board of county commissioners as compensation for services rendered within their respective counties a salary as follows: In counties of five thousand inhabitants or less twelve hundred dollars, and in any county where the population exceeds five thousand inhabitants, he shall also receive an additional compensation of one hundred dollars for every five hundred inhabitants over five thousand, said salary shall be payable in quarterly installments by the proper county. Whenever the prosecuting witness or defendant is adjudged to pay the costs the court shall tax as costs the following fees for the benefit of the county; for drawing indictment, five dollars; for services on trial of any indictment for felony, twenty-five dollars; for services on trial of any indictment for misdemeanor, ten dollars; for services in action on forfeited recognizance or bond, twenty dollars; for services in case where action is dismissed, five dollars; for services in attending an examination of persons charged with an offense before justice of the peace, five dollars; for services on trial of misdemeanor before justice of the peace, five dollars; *Provided*, That the salary of the county and prosecuting attorney for Laramie County shall be twenty-five hundred dollars per annum, payable quarterly out of the treasury of said county; *Provided further*, That when any county attorney may be called upon to render services for his county pursuant to law, outside of his county, or within his county at a distance of more than ten miles from the county seat, and away from his own residence, he shall receive his actual necessary expenses in attending to such services in addition to his salary as county and prosecuting attorney. [S. L. 1882, ch. 45, § 18. S. L. 1884, ch. 56, § 1. S. L. 1886, ch. 64, § 1.]

Compensation of county commissioners.

SEC. 1195. Each member of the board of county commissioners of any county shall receive a compensation for his services and expenses in attending the meetings of said board, at the rate of five dollars per day for the time he shall actually attend, as shall appear on the minutes of said board, and including the time necessary in going to and returning from the same, said distance being computed at the rate of fifty miles per day. They shall also be allowed ten cents per mile for the distance actually and necessarily traveled in going to and returning from the county seat; *Provided*, That in all cases where a member of any board of county commissioners shall have to travel off any line of railroad from his residence to tne county seat to sit as a member of the board, he shall be allowed fifteen cents per mile for the distance actually and necessarily so traveled, in going to and returning from the county seat. They shall also be allowed an annual salary of two hundred dollars each, which shall be deemed full compensation for all service and expenses of viewing roads, bridges and attending to the necessities of paupers. [S. L. 1884, ch. 42, § 1.]

Compensation of superintendent of schools.

SEC. 1196. Every county superintendent of public schools shall be paid mileage at the rate of fifteen cents for each mile actually and necessarily traveled by the nearest traveled route for visiting each school in the county during school hours, twice every year, and examining the several schools, which mileage shall not be allowed unless the distance actually and necessarily traveled on such service is sworn to, and such county superintendents of public schools shall be paid a salary as herein provided, to-wit: In the counties of Laramie, Albany, Carbon, Johnson and Uinta, the superintendent of public schools shall receive a salary of five hundred dollars per annum, and in all other counties of this territory such superintendent shall receive a salary of three hundred dollars per annum. [S. L. 1886, ch. 31, § 1.]

Fees of triers.

SEC. 1197. Triers shall be allowed three dollars each per day for the time actually serving as such and ten cents per mile for the distance traveled necessarily in going from the place where summoned to the place where they are to serve and in returning. [S. L. 1882, ch. 45, § 21.]

Fees of constables.

SEC. 1198. Constables shall be entitled to the following fees: For serving any writ, order, process or notice not herein otherwise provided for when the same contains the name of but one person to be served, fifty cents, for each additional person, twenty-five cents; for serving subpœna on witness, fifty cents; and for each additional witness in same subpœna, twenty-five cents; for making appraisal of property and return thereof, fifty cents; for taking and returning a bond or undertaking, fifty cents; for summoning a jury, fifty cents; for attending jury, fifty cents; for each mile actually and necessarily traveled in serving and returning any writ, process, order, or notice, fifteen cents; for bringing prisoner into court by order, twenty-five cents; for attending criminal examination each day, one dollar; for copy of summons or other writ left with party or at place of abode, twenty-five cents; for moneys collected on execution, five per centum thereon; for keeping, subsisting and caring for any property while in custody under any writ or order issued by a justice of the peace, a reasonable compensation to be fixed by the justice; for making return on any writ, order, process or notice, twenty-five cents. [S. L. 1882, ch. 45, § 22.]

Fees of witnesses.

SEC. 1199. Witnesses shall be entitled to receive the following fees: For attending before any court or grand jury, or before any judge, referee or commissioner, two dollars per day, and one dollar and fifty cents for half a day; for attending before a justice of the peace, one dollar and fifty cents per day, and one dollar for half a day; for each mile actually and necessarily traveled in going to and returning from place of attendance, ten cents; but no witness shall receive fees or mileage in more than one case covering the same period of time, or the same travel; and each witness shall be required to make affidavit that the fees and mileage claimed, have not been claimed or received in any other case; and no juror shall receive pay as a witness while serving as such juror. [S. L. 1882, ch. 45, § 23.]

Fees of physician testifying as expert.

SEC. 1200. Any physician or surgeon who may be called upon to testify as an expert before a coroner, or other officer, shall be entitled to a fee of five dollars for half a day or less and for more than half a day ten dollars, and when called upon to make a post mortem examination shall be entitled to a fee of thirty dollars; *Provided*, That the post mortem be actually made. [S. L. 1882, ch. 78, § 1.]

Certificate of physician's fees on post mortem examination.

SEC. 1201. It shall be the duty of the coroner or other officer who has ordered such post mortem examination to issue to said physician or surgeon a certificate for the fees herein before provided, which shall be paid by the board of county commissioners by issuing a county warrant on the treasurer of the county in which such services were rendered in the amount of such certificate issued by the coroner or other officer; *Provided*, That this and the last preceding section shall not apply in the case of any physician regularly employed by the county as such. [S. L. 1882, ch. 78, § 2.]

Fees of interpreters.

SEC. 1202. Interpreters shall receive for their service the sum of three dollars per day, commencing at the time when they shall have been sworn in and ending when discharged by the court. [S. L. 1882, ch. 56, § 2.]

Fees of jurors in justices' court.

SEC. 1203. Each juror for attending and serving as such in a justice's court shall be entitled to a fee of one dollar per day. [S. L. 1882, ch. 45, § 24.]

Justice may be paid salary in lieu of certain fees.

SEC. 1204. Whenever in the judgment of the board of county commissioners of any county the interests of the public so require, such board may allow and pay to the justice of the peace of any precinct an annual salary not exceeding two hundred and fifty dollars for the services rendered by such justice in the exercise of his criminal jurisdiction, but in such case such justice shall receive no fees in criminal cases; such salary shall be paid quarter yearly. [S. L. 1882, ch. 58, § 1.]

Salary of justice for Ft. Laramie precinct.

SEC. 1205. The justice of the peace for the precinct of Laramie County, in which Fort Laramie is situated, is hereby authorized to hold his office and court upon the reservation or at the fort, and to reside thereon if the interests of the business of his office require it, and such justice of the peace shall receive an annual salary of two hundred and fifty dollars, to be paid quarter yearly, if required or demanded, out of the funds of the county treasury of Laramie County. [S. L. 1877, p. 74, § 1.]

Limitation upon fees of jurors in district court.

SEC. 1206. All persons summoned as jurors in the district courts of this territory shall receive the fees hereinafter provided, and none other. [S. L. 1879, ch. 37, § 1.]

Mileage of jurors in district court.

SEC. 1207. For each mile actually and necessarily traveled in going to and returning from the place of trial, they shall receive the sum of ten cents, when the distance so actually and necessarily travelled shall exceed one mile. But any person summoned from a distance of twenty-five miles or more from the line of any railroad, shall receive the sum of fifteen cents per mile for each and every mile actually and necessary traveled. [S. L. 1879, ch. 37, § 2.]

Per diem of jurors in district court.

SEC. 1208. When the time of attendance of any juror shall not exceed one-quarter of a day he shall be entitled to receive fifty cents. And when the time of such attendance shall not exceed one-half day he shall be entitled to receive one dollar, and when the time of such attendance shall be one day or more, he shall be entitled to receive two dollars for each day or part of a day of such attendance. But any person summoned from a distance of five miles or more from the county seat of any county shall receive three dollars per day for each days attendance. [S. L. 1879, ch. 37, § 3.]

Clerk of court to issue certificates to jurors.

SEC. 1209. It shall be the duty of the clerk of the court to note the time of the discharge of each juror so summoned, and to issue to such juror a certificate under the seal of the court for the amount due him as provided in the last two preceding sections. [S. L. 1879, ch. 37, § 5.]

Fees in criminal cases, by whom paid.

SEC. 1210. In all cases where the fees prescribed by this chapter in criminal cases are not paid by the defendant or the prosecuting witness, they shall be paid to the party entitled thereto by the county, except in the cases of such officers or parties as are not by this chapter entitled to any fees for services rendered in such cases. [S. L. 1882, ch. 45, § 25.]

Clerk to keep record of attendance of jurors and witnesses.

SEC. 1211. The clerk of the district court shall keep a record of the attendance of jurors at each term of court and of the attendance and fees of witnesses when claimed during the term and for which the county is liable. [S. L. 1882, ch. 45, § 26.]

Clerk to make statement of attendance to commissioners.

SEC. 1212. Within ten days after the close of each term of a court of record, the clerk thereof shall return to the county commissioners a statement of the attendance of jurors at such term and their mileage as taken by him, together with a statement of the attendance and mileage of witnesses in all criminal cases claimed and for which the county is liable. [S. L. 1882, ch. 45, § 27.]

Witnesses demanded at one time to be named in one writ.

SEC. 1213. It shall be the duty of every officer authorized to issue the writ of subpœna in this territory, to put the names of all witnesses for the plaintiff or prosecutor on one writ, and for the defendant on a separate writ, and every such officer, who, by the laws of this territory, shall be entitled to fees for the issuance of such writ, shall, with the fee bill for the same presented for allowance to the board of county commissioners, or other board or officer whose duty it is to allow or pay such bill or claim for such fees, make affidavit that the names of all such witnesses demanded to be subpœnaed at any one time, were stated in the writ issued in pursuance of such demand, and not otherwise, and no fee bill for issuing subpœnas shall be allowed without such an affidavit. Nor shall any costs for the issuance of subpœna in any civil case be taxed unless all the names of witnesses required on a single precipe be incorporated in a single writ of subpœna. [S. L. 1879, ch. 40, § 1.]

Limitation on fees for attaching official seal.

SEC. 1214. In all cases where fees are allowed by law for the attachment of any official seal to any paper, no fees shall be allowed for the attachment of such seal, unless the law expressly provides that such seal shall be so attached, or where such paper would not be of authority, or due notice without the attaching of such seal, and any paper or certificate that would be of sufficient notice or authority without the attaching of such seal, the attachment of such seal to such paper or certificate shall be ignored in the payment of any fees allowed by law for the issuance of such paper or certificate. [S. L. 1879, ch. 40 § 2.]

Limitation upon allowances for mileage.

SEC. 1215. In all cases where mileage is allowed by law, no mileage shall be allowed where services are rendered more than once in any given place from the point of departure by virtue of one process or authority, except the distance from one point to another, on the same service in the same place. Nor when in passing from one place to another on the same journey to perform such service, as by law mileage is allowed, shall mileage be allowed from the point of departure but from one place to the other in accordance with the fact. And if any officer or other person who is allowed mileage for any services rendered, shall at the same time receive more than one writ or process to serve, or authority to render more than one service at the same place, he shall be entitled to mileage only for the actual number of miles traveled, allowing a full mile for every person served with notice or process or every service rendered in the same place and during the same journey. And his return or claim for such mileage shall show the actual number of miles necessarily traveled from the place where he received his authority to the place where the actual service was made or rendered, allowing a full mile, as above provided for, and mileage shall not be allowed as if each service made or rendered was a distinct service from the point of departure or place where the authority writ or process was received, and no mileage shall be allowed without such showing made explicitly and distinctly. Should any false statement of mileage appear or be proved, then no mileage whatever shall be allowed for any services performed by virtue of the authority, writ or process by which such services were rendered, and nothing in this chapter shall be construed as to excuse the maker of such false statement from criminal process. [S. L. 1879, ch. 40, § 3.]

No fees allowed for constructive service.

SEC. 1216. No officer or other person shall receive any fees for constructive services or constructive mileage. [S. L. 1882, ch. 45, § 33.]

Limitation on per diem compensation.

SEC. 1217. If a witness or juror shall be summoned to serve in more than one criminal case in the same court, on the same day, such witness or juror shall be entitled to but one days service, which shall be taxed as costs in the first such case. And it is made the duty of the officer so swearing said witness or juror, to keep a proper account of the same, in order that not more than one payment shall be made under such circumstances. This shall also apply to grand juries and witnesses before grand juries. [S. L. 1879, ch. 40, § 4.]

Court officers not allowed witness fees.

SEC. 1218. No officer whose duty it is to be in constant attendance upon any court, and who may be sworn as a witness in any case then pending in such court, shall be entitled to witness fees in such case. [S. L. 1879, ch. 40, § 5.]

Fee list to be posted in certain offices.

SEC. 1219. Each officer herein named shall cause a list of his fees to be posted up in his office in a conspicuous place; for a failure to do so he shall forfeit and pay three dollars per day for each day of such failure, which may be recovered by the county in a civil action. [S. L. 1882, ch. 45, § 28.]

Officer's return to show fees claimed.

SEC. 1220. No officer serving any process or order shall be entitled to any fees for such service unless he return on such process the amount of his fees and the items thereof. [S. L. 1882, ch. 45, § 29.]

Certified bill of costs to be made on application.

SEC. 1221. Any person liable for any costs or fees shall be entitled to receive, on demand, a certified bill of the same, in which the items of service and the charges therefor shall be stated and the person claiming such fees or costs shall on demand give the person liable to pay such fees or costs, a receipt therefor on payment, setting forth the items and date of each. [S. L. 1882, ch. 45, § 30.]

Justice to certify costs in criminal cases.

SEC. 1222. It shall be the duty of every justice of peace, to tax the cost of every criminal prosecution or trial before him, and to certify the same to the board of the county commissioners in all cases in which the county is liable therefor. [S. L. 1882, ch. 45, § 31.]

Disposition of costs collected.

SEC. 1223. It shall be the duty of the sheriff and every other officer collecting costs on execution, after retaining the amount of his own fees, to pay the residue of such costs collected to the clerk of the court from which the execution issued, or to the justice and take a receipt therefor. [S. L. 1882, ch. 45, § 32.]

"Folio" defined.

SEC. 1224. The term folio as used in this chapter shall be construed to mean one hundred words, and four figures shall be counted as one word. [S. L. 1882, ch. 45, § 34.]

When and by whom fees payable.

SEC. 1225. All fees provided for in this chapter when due from any party other than the territory or the county, shall be payable in advance, and to the officer or person entitled to the same, and all fees and compensation due to any officer or person from the county, shall be payable in warrants upon the treasurer quarter yearly, and in the manner now provided by law unless herein otherwise expressly provided. [S. L. 1882, ch. 45, § 35.]

How population determined in regulating salaries, etc.

SEC. 1226. The number of inhabitants or population in any county or precinct of this territory for the purposes of this chapter, shall be ascertained and determined by the reference to the census thereof taken by the United States in the year A. D., eighteen hundred and eighty, and such census shall determine. all questions of population or number of inhabitants arising under this chapter until such time as another census of the population is taken and promulgated in a manner provided by law. The counties of Johnson, Fremont and Crook, and any county hereafter organized shall be considered as having a population not exceeding five thousand. [S. L. 1882, ch. 45, § 36.]

TITLE 13. FIREMEN.

CHAPTER 1.

EXEMPTIONS OF.

SECTION.
1227. Certain firemen exempt from jury service.
1228. Certain firemen exempt from poll tax—Wives also exempt.
1229. Exempt firemen to be noted on assessment roll.
1230. Exemptions of firemen after five years service—Certificate of exemption.
SECTION.
1231. Honorary firemen exempt—Certificate of exemption.
1232. City clerk to certify list of firemen to county clerk—County clerk to transmit certified list to successor, etc.

Certain firemen exempt from jury service.

SEC. 1227. Hereafter the first forty active members upon the roll of any hose, hook and ladder or other fire company in any incorporated city or town, or at any military post or depot within three miles of any incorporated city or town within this territory, shall be exempt from serving on any jury, whether drawn as a juror or summoned as a talesman; *Provided*, That this exemption need not be allowed unless the secretary of such company shall transmit to the county clerk prior to the time when the proper officers shall select the names from which to draw jurors, a list of all persons in such company who are exempt from serving as jurors, and it shall be the duty of the county clerk, within ten days after receiving such list, to transmit a certified copy thereof to each justice of the peace residing in the city, town or military post or depot wherein such company is located, and one to the sheriff of the county and one to the coroner of the county. [S. L. 1884, ch. 43, § 1. S. L. 1886, ch. 114, § 2.]

Certain firemen exempt from poll tax—Wives also exempt.

SEC. 1228. Hereafter the first forty active members upon the roll of any hose, hook and ladder or other fire company in any incorporated city or town or at any military post or depot within three miles of any incorporated city or town within this territory who shall have been members of such company at least one year and shall have complied with all of its rules and regulations, shall be exempt from the payment of poll tax; *Provided*, The chief officer of the fire department of such city, town, military post or depot shall, on or before the first Monday in May of each year, transmit to the county assessor of the county wherein such city, town, military post or depot is located, a sworn statement of all the members in said department and under his jurisdiction, who are entitled to exemption from the payment of poll tax for that year; *And, provided further*, That the wife of such person shall also be exempt from the payment of poll tax, the same as her husband. [S. L. 1884, ch. 43, § 2.]

Exempt firemen to be noted on assessment roll.

SEC. 1229. It shall be the duty of the county assessor to write the words "exempt fireman" on the assessment roll opposite the name of each person who has been returned to him as exempt from poll tax, and such person shall not be required to pay poll tax that year. [S. L. 1884, ch. 43, § 3.]

Exemptions of firemen after five years service—Certificate of exemption.

SEC. 1230. When any person who is now or shall hereafter become an active member of any hose, hook and ladder or other fire company in any incorporated city or town, or at any military post or depot within three miles of any incorporated city or town within this territory, shall have served five years as an active member of such company, and during that time shall have complied with all its rules and regulations, such person shall be exempt from serving on any jury, whether he be drawn as a juror or summoned as a talesman, so long as he shall reside in this territory, and himself and his wife shall be exempt from the payment of poll tax so long as they or either of them shall reside in this territory; but before such persons shall be entitled to the exemptions provided for in this section he must first obtain from the clerk of the city or town wherein he performed the service (or in case of a military post or depot where the company is under the jurisdiction of the chief officer of the fire department of an incorporated city or town,) the certificate hereinafter provided for.

It shall be the duty of the chief officer of any hose, hook and ladder or other fire company, to issue to any person entitled thereto, within thirty days after application for the same is made, a certificate stating that such person has served five years as an active member of said company, and has complied with all its rules and regulations, and is entitled to the exemptions provided for in this section, and upon presentation of such certificate it shall be the duty of the clerk of such city or town to issue to such person a certificate stating that such person has served five years as an active fireman, the name of the company in which he served, and the exemptions to which he is entitled under the provisions of this chapter, which certificate shall be signed by the mayor or chief officer of such city or town and attested by the clerk, under the seal of the city or town wherein it is issued; *Provided*, Any person who, before the passage of this chapter has served five years, and is now an active member of any such company, shall be entitled to such certificate on demand, if the demand is made while he is an active member of such company; *And*, *provided further*, Nothing in this chapter shall be so construed as to compel any person receiving such certificate to retire from active service as a fireman. [S. L. 1884, ch. 43, § 4. S. L. 1886, ch. 114, § 3.]

Honorary firemen exempt—Certificate of exemption.

SEC. 1231. Any person whose name appears on the roll of honorary members of any hose, hook and ladder or other fire company, in any incorporated city or town, or at any military post or depot within three miles of any incorporated city or town within this territory, at the time of the passage of this chapter, shall, if the records of said company show that he rendered five years active service before being placed upon the honorary list, be entitled to the exemption provided for in the preceding section; and upon satisfactory proof, to be taken from the records, the chief officer of the company shall issue to such honorary member the necessary certificate; upon presentation of such certificate the clerk of the city or town shall issue a certificate showing the exemption to which such person is entitled. [S. L. 1884, ch. 43, § 5. S. L. 1886, ch. 114, § 4.]

City clerk to certify list of firemen to county clerk—County clerk to transmit certified list to assessor, etc.

SEC. 1232. The clerk of any incorporated city or town shall immediately transmit to the county clerk of the county wherein such city or town is located, a certified list of the names of the persons to whom said certificates have been issued, and when the clerk of any incorporated city or town shall hereafter issue one of said certificates, he shall within ten days thereafter certify the name of the person to whom it was issued, to the county clerk, and the county clerk shall keep a record of all such names so certified to him, in a book kept for that purpose. On or before the day for beginning the annual assessment, the county clerk shall transmit to the county assessor a certified list of the names of all persons who have received said certificates, as shall appear from the records in his office. It shall be the duty of the county clerk to transmit to the clerk of any city or town where any such exempt fireman lives, not more than ten nor less than five days before the annual election of said city or town, a full and complete list of all firemen exempt under this chapter, and it shall be the duty of the clerk of each and every such city or town, to furnish to the judges of election of each and every voting precinct within the limits of said city or town, at any election, a full and complete copy of said list as furnished by the county clerk of their respective counties. [S. L. 1886, ch. 47, § 1.]

TITLE 14. FISH.

CHAPTER 1.

PROPAGATION AND PROTECTION OF.

SECTION.
1233. Fish commissioner—Appointment and term of office.
1234. Salary of commissioner.
1235. Powers and duties of commissioner.
1236. Further duties of commissioner.
1237. Report of commissioner.
1238. Obstructing passage of fish prohibited.
1239. Fish ways to be built in dams.
1240. Fishing near dams prohibited.
1241. Throwing sawdust, etc., in streams prohibited.
SECTION.
1242. Fishing unlawful after notice that stream is stocked.
1243. Fishing with poisons, etc., unlawful.
1244. Fishing between November and July, unlawful.
1245. Penalty for unlawful fishing.
1246. County commissioners authorized to appropriate money for culture of fish.
1247. Ditch owners to prevent fish from entering ditch.
1248. Penalty for violating last section.

Fish commissioner—Appointment and term of office.

SEC. 1233. The governor of the territory shall nominate, and by and with the advice and consent of the council, appoint a fish commissioner, a resident citizen of Wyoming Territory, who shall hold his office for two years, and until his successor is appointed; *Provided*, That when a vacancy occurs in said office of fish commissioner, and the council is not in session, the governor shall have power to fill such vacancy. [S. L. 1886, ch. 45, § 1.]

Salary of commissioner.

SEC. 1234. The fish commissioner shall receive an annual salary of three hundred and fifty dollars, which shall be in lieu of all expenses he may be at while in the discharge of his duties. [S. L. 1886, ch. 45, § 2.]

Powers and duties of commissioner.

SEC. 1235. The fish commissioner shall have entire control and supervision of the public waters pertaining to the collection, propagation, culture, distribtion and protection of fish in Wyoming Territory, and shall distribute all fish coming into his hands fairly and equitable among the several counties through the several fish commissioners of the various counties, or otherwise, as the county commissioners thereof may direct. He shall have full control of all persons employed, and of all property of the territory obtained or held for the purposes contemplated by this chapter. He shall receive all fish spawn donated to this territory from any source whatever; also all fish or fish spawn that may be purchased by this territory. He may establish hatching boxes for the preservation and hatching of spawn, and in the most economical and practicable manner procure and distribute fish for the public waters of this territory, and adopt such other means as shall, in his judgment, best promote the increase and preservation of food fishes. [S. L. 1886, ch. 45, § 3.]

Further duties of commissioner.

SEC. 1236. The fish commissioner may take, or cause to be taken, at any time or in any manner, fish for the purposes of propagation or inspection. He shall give special attention to the enforcement of the laws relating to the propagation, cultivation and protection of food fishes in the waters of Wyoming Territory. [S. L. 1886, ch. 45, § 4.]

Report of commissioner.

SEC. 1237. It shall be the duty of the fish commissioner to make a detailed statement or report of his official transactions, including expenditures and the purposes for which the same were made; also the number and kind of fish distributed, and the locality and the names of the streams, ponds or lakes where the same have been placed. This report shall be printed and distributed in the same manner as provided by law for the printing and distribution of the reports of other territorial officers. [S. L. 1886, ch. 45, § 5.]

Obstructing passage of fish prohibited.

SEC. 1238. It shall be unlawful for any person or persons to erect or place, or cause to be erected or placed, across any of the rivers, creeks, ponds or lakes of this territory any dam, net, service weir, trot line, or any other obstruction in such a manner as to prevent the free passage of fish up, down or through such waters, unless such dam, net, service weir, trot line or other obstruction shall be erected or placed across such stream, river, creek, pond or lake with the consent and under the direction of said fish commissioner. [S. L. 1886, ch. 45, § 6.]

Fishways to be built in dams.

SEC. 1239. The owner or owners of any dam erected across any of the streams within this territory shall, if required by the fish commissioner, build, erect and maintain at all times at his or their own expense, fish ways to allow the free and uninterrupted passage of fish up and down such stream. [S. L. 1886, ch. 45, § 7.]

Fishing near dams prohibited.

SEC. 1240. It shall be unlawful for any person or persons to take fish in any manner from the waters of any stream in the territory, within two hundred yards above or below any dam through which a fish way passes. [S. L. 1886. ch. 45, § 8.]

Throwing sawdust, etc., in streams, prohibited.

SEC. 1241. It shall be unlawful for the owner of any saw mill, reduction works, smelters, refining or concentration works, or any of the employes thereof, or any other person or persons whomsoever, to deposit, throw or in any way permit to pass into any natural stream, or any lake wherein are living fish, any sawdust, chemicals or other substance or substances that will or may tend to the destruction or driving away from such waters of any such fish. [S. L. 1886, ch. 45, § 9.]

Fishing unlawful after notice that stream is stocked.

SEC. 1242. It shall be the duty of said fish commissioner to publish a notice in the nearest weekly or other newspaper, for four successive weeks, stating what streams, lakes, ponds or other bodies of water he has stocked, and it shall be unlawful for any person to take any fish, in any manner whatsoever, out of any such body of water, for the space of three years after the first issue of such publication. [S. L. 1886, ch. 45, § 10.]

Fishing with poisons, etc., unlawful.

SEC. 1243. It shall be unlawful for any person or persons to kill or take any fish from any of the public waters of this territory by the use of any poison or deleterious drug, or by the use of any explosive substance, or by the erection of any weir, dam or other artificial obstruction, or by the use of any net, seine or device whatsoever, except by hook and line. [S. L. 1886, ch. 45, § 11.]

Fishing between November and July unlawful.

SEC. 1244. It shall not be lawful for any person or persons to kill or take any fish from the public waters of this territory in any manner whatsoever between the first day of November and the first day of July. [S. L. 1886, ch. 45, § 12.]

Penalty for unlawful fishing.

SEC. 1245. Any person violating any of the provisions of the preceding sections of this chapter shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, one-half of which sum shall be paid to the person giving information of the offense, the other half to be paid into the treasury of the county in which the offense was committed, for the benefit of the common school fund of such county. [S. L. 1886, ch. 43, § 13.]

County commissioners authorized to appropriate money for culture of fish.

Sec. 1246. The county commissioners of the several counties are hereby authorized to appropriate the sum of two hundred dollars per year, or such part thereof as they may deem necessary, for the propagation, culture and distribution of fish within the limits of their said counties, and such moneys shall be disbursed by a county fish commissioner, appointed by the board of county commissioners of each county, to whom the said county fish commissioner shall report and account for his disbursements. The county fish commissioner shall receive for his services the sum of one hundred dollars per annum, to be paid out of the county fund. [S. L. 1886, ch. 45, § 14.]

Ditch owners to prevent fish from entering ditch.

Sec. 1247. Any person, persons, corporation or corporations owning in whole or in part, or leasing, operating or having in charge any mill-race, irrigating ditch or canal, taking or receiving its water from any river, creek or stream in this territory in which fish may have been placed or may exist, shall put or cause to be placed and maintained over the inlet of such ditch, canal or mill-race a wire screen of such construction, fineness, strength and quality as shall prevent any such fish from entering such ditch, canal or mill-race. [S. L. 1884, ch. 44, § 1.]

Penalty for violating last section.

Sec. 1248. Any person or persons, corporation or corporations violating the provisions of the preceding section, or who shall neglect or refuse to provide, put up and maintain such screen, as required by the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten dollars and not more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days for each offense; *Provided*, That the continuance of such neglect or refusal from day to day after notification in writing by any person shall constitute a separate and distinct offense for each and every day of the continuance of such neglect or refusal; *Provided*, *further*, That no offense shall be committed by reason of such screen not being placed over the inlet of any ditch, canal or mill-race when water is not entering the same. [S. L. 1884, ch. 44, § 2.]

TITLE 15. FRAUDS AND PERJURIES.

CHAPTER 1.

STATUTE OF.

SECTION.	SECTION.
1249. Certain agreements void if not in writing.	1250. Contracts for sale of goods—When void

Certain agreements void if not in writing.

SEC. 1249. In the following cases every agreement shall be void unless such agreement, or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith:

First—Every agreement that by its terms is not to be performed within one year from the making thereof;

Second—Every special promise to answer for the debt, default or miscarriage of another person;

Third—Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry, and no action shall be brought to charge any person upon any breach of promise of marriage, either upon mutual promises or promise in writing, unless such action shall be brought within one year after the making such promise;

Fourth—Every special promise by an executor or administrator, to answer any demand out of his own estate;

Fifth—Every agreement or contract for the sale of real estate, or the lease thereof, for more than one year;

Sixth—To charge any person upon, or by reason of a representation or assurance concerning the character, conduct, credit, ability, trade or dealings of another, to the intent or purpose that such other may obtain thereby, credit, money or goods. [C. L. 1876, ch. 57, §§ 1 and 3.]

Contracts for sale of goods—When void.

SEC. 1250. Every contract for the sale of any goods, chattels or things in action for the price of fifty dollars or more, shall be void, unless:

First—A note or memorandum of such contract be made in writing and be subscribed by the party to be charged thereby; or

Second—Unless the buyer shall accept and receive part of such goods, or the evidences or some of them, of such things in action; or,

Third—Unless the buyer shall at the time pay some part of the purchase money. [C. L. 1876, ch. 57, § 2.]

TITLE 16. GAME.

CHAPTER 1.

PROTECTION OF.

SECTION.
1251. When certain game may be killed.
1252. Ruffed grouse, when may be killed.
1253. When certain game birds may be killed.
1254. When snipe, etc., may be killed.
1255. When wild duck, etc., may be killed.
1256. When unlawful to sell game.
1257. Unlawful to sell or transport hides of game.
SECTION.
1258. Unlawful for railroad to ship game.
1259. Limit on game that may be killed in one day.
1260. Penalty for violating game law.
1261. Disposition of fines.
1262. Restrictions upon killing beaver.
1263. Game detectives and their duties.

When certain game may be killed.

SEC. 1251. It shall be unlawful to pursue, hunt or kill any deer, elk, moose, mountain sheep, mountain goat, antelope or buffalo, save only from September first to January first inclusive, in each year, or kill or capture, by means of any pit, pitfall or trap, any of the above named animals at any time; no non-resident of this territory shall pursue, hunt or kill any deer, elk, moose, mountain sheep, mountain goat, antelope, deer or buffalo, by any means whatever; *Provided*, During the time aforesaid the actual and *bona fide* residents of this territory may pursue, hunt and kill said animals, but not by means of any pit, pitfall or trap. [S. L. 1886, ch. 109, § 1.]

Ruffed grouse, when may be killed.

SEC. 1252. It shall be unlawful to kill or destroy by any means, any ruffed grouse, save only from the fifteenth day of August to the fifteenth day of October in any year. [S. L. 1886, ch. 109, § 2.]

When certain game birds may be killed.

SEC. 1253. It shall be unlawful to kill or destroy, by any means, any colon or quail for the period of five years from the twelfth of March, 1886 and thereafter only during the month of September of each year, or for any one person to kill any ptarmigan, pinnated grouse, sharp tailed grouse, sage grouse, red grouse or any other grouse or sage hen, save only from August first to November the fifteenth inclusive in each year, or kill in any one day more than ten of any of the game birds hereinbefore mentioned; having in his or her possession in any one day more than thirty-five of any of the birds mentioned in this section shall be *prima facie* evidence of such violation. [S. L. 1886, ch. 109, § 3.]

When snipes, etc., may be killed.

SEC. 1254. It shall be unlawful to kill any snipe, green shank, tattler, godwit, curlew, avoset or other wader or plover, between the first day of April and the fifteenth day of August in each year. [S. L. 1886, ch. 109, § 4.]

When wild ducks, etc., may be killed.

SEC. 1255. It shall be unlawful to kill any wild duck, brant or goose from the first day of May to the fifteenth day of August in each year, or at any time to trap, net or ensnare any of the birds mentioned in this section; it shall be unlawful to kill any fowl or bird that subsists on insects, only as food, at any time in each year. [S. L. 1886, ch. 109, § 5.]

When unlawful to sell game.

SEC. 1256. It shall be unlawful to sell or expose for sale the carcass, or any part thereof suitable for food, of any of the kinds or species of animals or birds protected by this chapter, save during the open seasons provided by this chapter, and for thirty days next succeeding the time limited for the killing of such animals or birds; *Provided*, It shall be lawful to sell any colon or quail for the purpose of breeding, or the taking of the same alive, for preservation throuugh winter. And it shall also be lawful for any person to take alive on his own premises, at any time and in any manner, any of the animals or birds hereinbefore mentioned for the sole purpose of domesticating, or for scientific or breeding purposes. [S. L. 1886, ch. 109, § 6.]

Unlawful to sell or transport hides of game.

SEC. 1257. It shall be unlawful for any person or persons to purchase or obtain by barter any green or untanned hide or hides of any of the animals mentioned in section twelve hundred and fifty-one, except for the purpose of tanning or converting into leather; and furthermore, it shall be unlawful for any corporation, company, person or persons to transport or to have in their pessession for transportation any green or untanned hide or hides of the animals mentioned in said section after the expiration of sixty days from the passage of this chapter; *Provided*, That none of the provisions of this section shall apply to hides in transit through this territory from other states or territories. [S. L. 1886, ch. 109, § 7.]

Unlawful for railroad to ship game.

SEC. 1258. It shall be unlawful for any railroad company, express company or common carrier, or any of their agents or employes, or other person or persons to receive or have in their possession for transportation, any carcasses or parts of carcasses of any of the birds or animals named in this chapter, or to transport the same after the expiration of thirty days after March twelfth, eighteen hundred and eighty-six; *Provided*, That none of the provisions of this section shall apply to game in transit into or through this territory from other states or territories. [S. L. 1886, ch. 109, § 8.]

Limit on game that may be killed in one day.

SEC. 1259. It shall be unlawful for any person or persons to kill more than two of any of the animals named in section twelve hundred and fifty-one, in any one day. Having in possession killed in any one day more than two of the animals mentioned in said section, shall be *prima facie* evidence of a violation of this chapter. [S. L. 1886, ch. 109, § 9.]

Penalty for violating game law.

SEC. 1260. Any corporation, company, person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be subject to a fine of one hundred dollars for each offense, or in the case of a person or persons by imprisonment in the county jail for a period of not more than ninety days, or both. [S. L. 1886, ch. 109, § 10.]

Disposition of fines.

SEC. 1261. Any person or persons giving information of any violation of this chapter to the prosecuting attorney, or any justice of the peace of the county in which such violation occurred, shall be entitled to one-half of all such fines recovered; the other one-half of such fines, after deducting costs of prosecution, shall be paid into the county school fund, and in case said informer shall not demand one-half of said fine, then the whole of said fine so received (deducting costs) shall be paid into the said school fund. [S. L. 1886, ch. 109, § 11.]

Restrictions upon killing beaver.

SEC. 1262. It shall be unlawful for any person at any time to enter or go upon the enclosed premises of another without his consent and trap, take, kill or destroy any beaver therein, and any person who shall do so shall be guilty of a misdemeanor, and upon conviction therefor shall be fined in a sum not exceeding one hundred dollars. [S. L. 1882, ch. 7, § 1.]

Game detectives and their duties.

SEC. 1263. All stock detectives shall be made game detectives, and it shall be their duty to see to the protection of game, and make information of any violation of the provisions of this chapter, and it shall also be the duty of all sheriffs, constables and other peace officers to see that none of the provisions of this chapter are violated. [S. L. 1886, ch. 109, § 12.]

TITLE 17. HABEAS CORPUS.

CHAPTER 1.

GENERAL PROVISIONS.

SECTION.
1264. Requisites of petition.
1265. Petition to be verified.
1266. By whom writ may be allowed.
1267. When allowed by probate judge.
1268. Application to be made to nearest judge.
1269. If petition insufficient, writ to be refused.
1270. Allowance and form of writ.
1271. By whom issued.
1272. Reasons to be assigned for disallowance.
1273. Penalty for wrongful disallowance.
1274. When writ issued without application.
1275. By whom writ served.
1276. Manner of service.
1277. Service may be made on person having custody of plaintiff.
1278. When defendant to be arrested.
1279. Power of sheriff making arrest.
1280. When plaintiff to be taken in custody by officer.
1281. Order for summary production of plaintiff.
1282. Order for defendant's arrest.
1283. Service of order of arrest.
1284. Examination of defendant.
1285. Errors in writ to be disregarded.
1286. Identity of defendant presumed.
1287. Defendant to appear and answer.
SECTION.
1288. To produce plaintiff.
1289. Failure to obey writ—Penalty.
1290. Service of attachment.
1291. Prosecuting attorney to be notified.
1292. Answer, what to contain.
1293. Answer must show transfer of plaintiff.
1294. Copy of process to be annexed to answer.
1295. Plaintiff may demur or reply—Trial by court.
1296. When evidence before magistrate may be reviewed.
1297. Affidavits may be used as evidence.
1298. Attendance of witnesses may be compelled.
1299. Certain proceedings not reviewable.
1300. When plaintiff to be discharged.
1301. Errors in commitment to be disregarded.
1302. Plaintiff may be admitted to bail.
1303. Custody of plaintiff pendente lite.
1304. Presence of plaintiff at trial, how waived.
1305. Disobeying order of discharge—Penalty.
1306. Eluding service of writ—Penalty.
1307. Officer to furnish copy of mittimus on request.
1308. Papers to be filed—Journal entry.
1309. Fees and costs not to be advanced.

Requisites of petition.

Sec. 1264. The petition for the writ of *habeas corpus* must be sworn to and must state:

First—That the person on whose behalf it is sought is restrained of his liberty, and the person by whom, and the place where he is so restrained, mentioning the names of the parties, if known, and if unknown, describing them with as much particularity as practicable;

Second—The cause or pretense of such restraint, according to the best information of the applicant; and, if it be by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason presented for its absence;

Third—It must state that the restraint is illegal and wherein;

Fourth—That the legality of the imprisonment has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant, or if so previously adjudged upon, stating forth as fully as practicable, the facts of such previous hearing, with a copy of all the papers connected therewith, or a satisfactory reason for the absence of such copy or copies;

Fifth—It must also state whether application for the writ has been made to and refused by any court or judge, and if such application has been made, a copy of the petition in that case, with the reasons for the refusal thereto appended, must be produced, or satisfactory reasons given for the failure to do so. [C. L. 1876, ch. 61, § 1.]

Petition to be verified.

Sec. 1265. The petition must be sworn to by the person confined, or by some one in his behalf, and presented to some court or officer authorized to allow the writ. [C. L. 1876, ch. 61, § 2.]

By whom writ may be allowed.

SEC. 1266. The writ of *habeas corpus* may be allowed by the supreme or district court, or by any judge of either of those courts. In such cases, it may be served in any part of the territory. [C. L. 1876, ch. 61, § 3.]

When allowed by probate judge.

SEC. 1267. It may also be allowed by any probate judge of the county where the applicant is held at the time of making his application, except when the commitment was made by order of one of the courts or officers mentioned in the preceding section, but when allowed by the probate court it is valid only within the limits of county where issued. [C. L. 1876, ch. 61, § 4.]

Application to be made to nearest judge.

SEC. 1268. Application for this writ, when made to the supreme or district courts or to either of the judges thereof, must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to for the writ, may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient supreme or district court or a judge thereof. [C. L. 1876, ch. 61, § 5.]

If petition insufficient, writ to be refused.

SEC. 1269. If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge may refuse to allow the writ. [C. L. 1876, ch. 61, § 6.]

Allowance and form of writ.

SEC. 1270. But if the petition show a sufficient ground for relief and is in accordance with the foregoing requirements, the writ shall be allowed and may be substantially as follows:

The Territory of Wyoming: To the sheriff of, &c., (or to A. B., as the case may be,) you are hereby commanded to have the body of C. D., by you unlawfully detained as is alleged, before the court, or before me, or before E. F., judge, &c., (as the case may be) at——————on the————day of ——————, 18—— (or immediately after being served with the writ,) to be dealt with according to law, and have you there and then this writ with a return thereon of you doings in the premises. [C. L. 1876, ch. 61, § 7.]

By whom writ issued.

SEC. 1271. When the writ is allowed by a court, it is to be issued by the clerk, but when allowed by a judge he must issue the writ himself, subscribing his name thereto without any seal. [C. L. 1876, ch. 61, § 8.]

Reasons to be assigned for disallowance.

SEC. 1272. If the writ is disallowed, the court or judge shall cause the reasons of said disallowance to be appended to the petition, and returned to the person applying for the writ. [C. L. 1876, ch. 61, § 9.]

Penalty for wrongful disallowance.

SEC. 1273. Any judge, whether acting individually or as a member of a court, who wrongfully and wilfully refused such allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars. [C. L. 1876, ch. 61, § 10.]

When writ issued without application.

SEC. 1274. Whenever any court or judge authorized to grant this writ, has evidence from a judicial proceeding before them, that any person within the jurisdiction of such court or officer, is illegally imprisoned, or restrained of his liberty, it is the duty of such court or judge to issue or cause to be issued, the writ as aforesaid, though no application be made therefor. [C. L. 1876, ch. 61, § 11.]

By whom writ served.

SEC. 1275. The writ may be served by the sheriff or by any other person appointed for that purpose by the court, or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power, and is liable to the same penalty for a non-performance of his duty as though he were the sheriff. [C. L. 1876, ch. 61, § 12.]

Manner of service.

SEC. 1276, The proper mode of service is by leaving the original writ with the defendant, and preserving a copy thereof on which to make the return of service. [C.L. 1876, ch. 61, § 13.]

Service may be made on person having custody of plaintiff.

SEC. 1277. If the defendant cannot be found, or if he have not the plaintiff in custody, the service may be made upon any person having the plaintiff in his custody in the same manner and with the same effect as though he had been made defendant therein. [C. L. 1876, ch. 61, § 15.]

When defendant to be arrested.

SEC. 1278. If the defendant conceal himself, or refuse admittance to the person attempting to serve the writ, or if he attempt wrongfully to carry the plaintiff out of the county or territory after the service of the writ, as aforesaid, the sheriff or the person who is attempting to serve, or who has served the writ as above contemplated, is authorized to arrest the defendant, and bring him, together with the plaintiff, forthwith before the officers or court before whom the writ is made returnable. [C. L. 1876, ch. 61, § 15.]

Power of sheriff making arrest.

SEC. 1279. In order to make such arrest, the sheriff or other person having the writ, possesses the same power as is given to a sheriff for the arrest of a person charged with a felony. [C. L. 1876, ch. 61, § 16.]

When plaintiff to be taken in custody by officer.

SEC. 1280. If the plaintiff can be found, and if no one appear to have the charge or custody of him, the person having the writ may take him into custody, and make return accordingly. And to get possession of the plaintiff's person, in such cases, he possesses the same power as is given by the preceding section for the arrest of the defendant. [C. L. 1876, ch. 61, § 17.]

Order for summary production of plaintiff.

SEC. 1281. The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before he could be relieved by the proceedings as above authorized, may issue a precept to the sheriff or any other person selected instead, commanding him to bring the plaintiff before such court or judge forthwith. [C. L. 1876, ch. 61, § 18.]

Order for defendant's arrest.

SEC. 1282. When the evidence aforesaid is further sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the precept must also contain an order for the arrest of the defendant. [C. L. 1876, ch. 61, § 19.]

Service of order of arrest.

SEC. 1283. The officer or person to whom the precept is directed must execute the same by bringing the defendant, and also the plaintiff, if required, before the court or judge issuing it, and thereupon the defendant must make return to the writ of *habeas corpus* in the same manner as if the ordinary course had been pursued. [C. L. 1876, ch. 61, § 20.]

Examination of defendant.

SEC. 1284. The defendant may also be examined and committed, or bailed or discharged, according to the nature of the case. [C. L. 1876, ch. 61, § 21.]

Errors in writ to be disregarded.

SEC. 1285. The writ of *habeas corpus* must not be disobeyed for any defect of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent of the writ. [C. L. 1876, ch. 61, § 22.]

Identity of defendant presumed.

SEC. 1286. Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to him by a wrong name or description. [C. L. 1876, ch. 61, § 23.]

Defendant to appear and answer.

SEC. 1287. Service being made in any of the modes hereinbefore provided, the defendant must appear at the proper time and answer the said petition. [C. L. 1876, ch. 61, § 24.]

To produce plaintiff.

SEC. 1288. He must also bring up the body of the plaintiff, or show good cause for not doing so. [C. L. 1876, ch. 61, § 25.]

Failure to obey writ—Penalty.

SEC. 1289. A wilful failure to comply with the above requisitions, renders the defendant liable to be attached for a contempt, and to be imprisoned until a compliance is obtained, and also subjects him to the forfeiture of one thousand dollars to the party thereby aggrieved. [C. L. 1876, ch. 61, § 26.]

Service of attachment.

SEC. 1290. Such attachment may be served by the sheriff or any other person thereto authorized by the judge, who shall also be empowered to bring up the body of the plaintiff forthwith, and has for this purpose the same powers as are above conferred in similar cases. [C. L. 1876, ch. 61, § 27.]

Prosecuting attorney to be notified.

SEC. 1291. The court or officer allowing the writ must cause the prosecuting attorney of the proper county to be informed of the issuing of the writ, and of the time and place, when and where it is made returnable, except when the court or officer may deem it unnecessary. [C. L. 1876, ch. 61, § 28.]

Answer, what to contain.

SEC. 1292. The defendant in his answer must state simply and unequivocally, whether he then has, or at any time has had the plaintiff under his control and restraint, and if so, the cause thereof. [C. L. 1876, ch. 61, § 29.]

Answer must show transfer of plaintiff.

SEC. 1293. If he has transferred him to another person, he must state the fact, and to whom, and the time thereof, as well as the reason and authority therefor. [C. L. 1876, ch. 61, § 30.]

Copy of process to be annexed to answer.

SEC. 1294. If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed. [C. L. 1876, ch. 61. § 31.]

Plaintiff may demur or reply—Trial by court.

SEC. 1295. The plaintaiff may demur or reply to the defendant's answer, and all issues joined thereon shall be tried by the judge or court. [C. L. 1876, ch. 61, § 32.]

When evidence before magistrate may be reviewed.

SEC. 1296. Such replication, except when the hearing is before the judge of probate of the county, may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge in connection with any other testimony which may then be produced. [C. L. 876, ch. 61, § 33.]

Affidavits may be used as evidence.

SEC. 1297. In the discretion of any court or judge, hearing or trying a writ of *habeas corpus*, affidavits taken by either party, on reasonable notice to the other, may be read as evidence. [S. L. 1884, ch. 47, § 1.]

Attendance of witnesses may be compelled.

SEC. 1298. The judge issuing any writ of *habeas corpus*, or the judge before whom it is tried, shall have the same power to compel the attendance of witnesses, or to punish contempt of his authority, as a court has. [S. L. 1884, ch. 47, § 2.]

Certain proceedings not reviewable.

SEC. 1299. It is not permissible to question the correctness of the action of a grand jury in finding a bill of indictment, or a petit jury in the trial of a cause, nor of a court or judge when acting within their legitimate province, and in a lawful manner. [C. L. 1876, ch. 61, § 34.]

When plaintiff to be discharged.

SEC. 1300. If no sufficient legal cause of detention is shown, the plaintiff must be discharged. [C. L. 1876, ch. 61, § 35.]

Errors in commitment to be disregarded.

SEC. 1301. Although the commitment of the plaintiff may have been irregular, still if the court or judge is satisfied from the evidence before them, that he ought to be held to bail or committed, either for the offense charged, or any other, the order may be made accordingly. [C. L. 1876, ch. 61, § 36.]

Plaintiff may be admitted to bail.

SEC. 1302. The plaintiff may, also, in any case be committed, let to bail, or his bail be mitigated or increased, as justice may require. [C. L. 1876, ch. 61, § 37.]

Custody of plaintiff pendente lite.

SEC. 1303. Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody, and may use all necessary and proper means for that purpose. [C. L. 1876, ch. 61, § 38.]

Presence of plaintiff at trial, how waived.

SEC. 1304. The plaintiff, in writing, or his attorney, may waive his right to be present at the trial, in which case the proceedings may be had in his absence; the writ will in such cases be modified accordingly. [C. L. 1876, ch. 61, § 39.]

Disobeying order of discharge—Penalty.

SEC. 1305. Disobedience to any order of discharge subjects the defendant to attachment for contempt, and also, to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by him in consequence of such disobedience. [C. L. 1876, ch. 61, § 40.]

Eluding service of writ—Penalty.

SEC. 1306. If the defendant attempt to elude the service of the writ of *habeas corpus* or to avoid the effect thereof by transferring the plaintiff to another, or by concealing him, he shall, on conviction, be imprisoned in the county jail not more than one year and fined not exceeding one hundred dollars, and any person knowingly aiding or abetting in any such act shall be subject to the like punishment. [C. L. 1876, ch. 61, § 41.]

Officer to furnish copy of mittimus on request.

SEC. 1307. Any officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody, to any person who demands such copy, shall forfeit five hundred dollars to the person so detained. [C. L. 1876, ch. 61, § 42.]

Papers to be filed—Journal entry.

SEC. 1308. When the proceedings are before a judge (except when the writ is refused) all the papers in the case shall be filed with the clerk of the district court of the county wherein the final proceedings were had and the final order therein shall be entered by the clerk upon the journal as a vacation order. [S. L. 1882, ch. 23, § 1.]

Fees and costs not to be advanced.

SEC. 1309. No officer shall refuse to perform any of the duties required by this chapter for the reason that his fees are not paid in advance, but the judge or court to whom application is made for said writ is made may, in his or its discretion, require the applicant to give security for the payment of such costs as may be taxed against such applicant. [C. L. 1876, ch. 61, § 44.]

TITLE 18. INTEREST.

CHAPTER 1.

LEGAL RATES OF.

SECTION.
1310. Any rate valid if in writing.
1311. Rate in absence of contract.
1312. Interest on judgments.
1313. Twelve per cent. in enumerated cases.
1314. Rate presumed to be by the year.
1315. Interest on public warrants.
1316. Rate on demands not enumerated.

Any rate valid if in writing.

SEC. 1310. Any rate of interest which may be agreed upon between parties, for the loan or foabearance of money, goods or things in action, shall be valid; *Provided*, That if such agreement be for a higher rate of interest than twelve per cent. per annum, the same shall be in writing. [C. L. 1876, ch. 63, § 1.]

Rate in absence of contract.

SEC. 1311. In the absence of any contract between the parties, the rate of interest upon loan or forbearance of money, goods, or thing in action, shall be at the rate of twelve per cent. per annum. [C. L. 1876, ch. 63, § 2.]

Interest on judgments.

SEC. 1312. Interest on all judgments or decrees for money, shall be at the rate of twelve per cent. per annum from the date of the rendition and signing thereof until satisfied. [C. L. 1866, ch. 63, § 3.]

Twelve per cent in enumerated cases.

SEC. 1313. On money due on an instrument in writing, or on settlement of account from the day the balance shall be agreed on, money received to the use of another, and retained without the owner's consent, express or implied, from the receipt thereof, and on money loaned or due and withheld by unreasonable delay of payment, interest shall be allowed at the rate of twelve per cent. per annum. Unsettled accounts between parties shall bear interest after thirty days from the date of the last item thereof. [C. L. 1876, ch. 63, § 4.]

Rate presumed to be by the year.

SEC. 1314. When in any instrument in writing, specifying the rate of interest, no period of time is mentioned for which such rate is to be calculated, it shall be deemed to be by the year. [C. L. 1876, ch. 63, § 5.]

Interest on public warrants.

SEC. 1315. All territorial, county, school district, town, city or other warrants issued after February eighth, eighteen hundred and eighty-two, for any salary or salaries, fee or fees, or for or on account of any indebtedness, claim or demand whatever, which indebtedness, claim or demand shall have accrued on any contract, transaction or liability entered into or arising after February eighth, eighteen hundred and eighty-two, shall draw interest upon the amount expressed in such warrant or warrants at the rate of eight per centum per annum from the date of the presentation thereof for payment at the treasury or other place where the same may be payable, until there is money in the treasury for the payment thereof, and it shall be unlawful to allow or pay any rate of interest upon such warrant, or warrants, except as herein specified and expressed, and every territorial or county treasurer to whom such order or warrant is presented for payment, provided he has not sufficient funds in the treasury to pay the same, shall indorse thereon the words "not paid for want of funds," and sign and date the same officially. [C. L. 1876, ch. 63, § 6. S. L. 1882, ch. 55, § 1.]

Rate on demands not enumerated.

SEC. 1316. The legal rates of interest in all debts, dues and demands not above specified, shall be at the rate of twelve per cent. per annum, in the absence of any contract by the parties to the contrary. [C. L. 1876, ch. 63, § 7.]

TITLE 19. IRRIGATION.

CHAPTER 1. RIGHTS TO USE OF WATER AND RIGHT OF WAY FOR DITCHES.
CHAPTER 2. APPROPRIATION OF WATER—PROCEDURE.
CHAPTER 3. OFFICIAL SURVEY OF DITCH.

CHAPTER 1.

RIGHTS TO USE OF WATER AND RIGHT OF WAY FOR DITCHES.

SECTION.
1317. Rights of riparian owners.
1318. When land owner entitled to right of way Damages.
1319. Extent of right of way.
1320. Petition to commissioners—Notice of appointing appraisers.
1321. Preceedings of appraisers—Payment of assessment.
1322. Owner may raise water from stream.
1323. Ditches to be kept in repair.

SECTION.
1324. Vested rights preserved.
1325. Ditches to be bridged.
1326. When commissioners to bridge ditches—Expenses.
1327. Claim for right of way may be arbitrated.
1328. Appointment and proceedings of arbitrators.
1329. Appeal to commissioners.
1330. If no appeal taken, award is final.

Rights of riparian owners.

SEC. 1317. All persons who claim, own, or hold a possessory right or title, to any land or parcel of land within the boundary of Wyoming Territory, when those claims are on the bank, margin or neighborhood, of any stream of water, creek, or river, shall be entitled to the use of the water of said stream, creek, or river, for the purposes of irrigation, and making said claim available, to the full extent of the soil, for agricultural purposes. [C. L. 1876, ch. 65, § 1.]

When land owner entitled to right of way—Damages.

SEC. 1318. When any person owning claims in such locality, has not sufficient length of area exposed to said streams to obtain a sufficient fall of water, to irrigate his land, or his farm, or land, used by him for agricultural purposes, is too far removed from said stream, and he has no water facilities on those lands, he shall be entitled to a right of way through the farms or tracts of land, which lie between him and said stream, or the farms, or tracts of land, which lie above, and below him, on said stream, for the purposes hereinbefore stated; *Provided*, That, in the construction, keeping up, and using any ditch through the lands of another person, the person or persons constructing or using said ditch, or whose duty it shall be to keep the same in repair, shall be liable to the person owning or claiming such land, for all damages accruing to such person by reason of said construction, keeping up and using such ditch. [C. L. 1876, ch. 65, § 2.]

Extent of right of way.

SEC. 1319. Such right of way shall extend only to a ditch, dyke, or cutting, sufficient for the purposes required. [C. L. 1876, ch. 65, § 3.]

Petition to commissioners—Notice of appointing appraisers.

SEC. 1320. Upon the refusal of the owners of tracts of land, or lands, through which said ditch is proposed to run, to allow of its passage through their property, the persons desiring to open such ditch, may present to the county commissioners of the county in which said lands are located, a petition, signed by the person, or persons, describing, with convenient accuracy, the lands so required to be taken as aforesaid, setting forth the name, or names, of the owner, or other person interested, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner, or persons interested. Upon the receipt of said petition, the said county commissioners shall give notice, at least thirty days prior to the appointment of the said appraisers, by public notice in a newspaper, when published in the county or by posting three or more notices in three different places in said county, stating that such appraisers will be appointed on the——day of——. [C. L. 1876, ch. 65, § 5.]

Proceedings of appraisers—Payment of assessment.

SEC. 1321. The said appraisers, before entering upon the duties of their office, shall take an oath, to faithfully and impartially discharge their duties, as said appraisers. They shall hear the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owner, or persons interested, for the lands to be taken or affected, as well as all damages accruing to the owner or person interested, in consequence of the condemnation of the same, taken or injuriously affected as aforesaid, making such deduction or allowance for real benefits, or advantages, which such owner, or parties interested, may derive from the construction of said ditch or flume. They, or a majority of them, shall subscribe a certificate of their said ascertainment and assessment, which shall be recorded in the county clerk's office of the county, in which said lands are situated, and upon the payment of the compensation, (if any), the said person or persons shall have the right of way of construct said ditch or flume. [C. L. 1876, ch. 65, § 6.]

Owner may raise water from stream.

SEC. 1322. All persons on the margin, bank, neighborhood, or precinct, of any stream of water, shall have the right and power to place upon the bank of said stream, a wheel, or other machine, for the purpose of raising water to the level required for the purpose of irrigation, and the right of way shall not be refused by the owner of any tract of land upon which it is required, subject of course, to the like regulations as required for ditches, and laid down in the last preceding section. [C. L: 1876, ch. 65, § 7.]

Ditches to be kept in repair.

SEC. 1323. The owner or owners of any ditch for irrigation, or other purposes, shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others. [C. L. 1876, ch. 65, § 8.]

Vested rights preserved.

SEC. 1324. Nothing in this chapter contained, shall be so construed as to impair the prior vested rights of any mill, or ditch owner, or other person, to use the waters of any such water-course. [C. L. 1876, ch. 65, § 9.]

Ditches to be bridged.

SEC. 1325. Any ditch company constructing a ditch, or any individual having ditches for irrigation, or for other purposes, whenever the same be taken across any public highway, or public traveled road, shall put a good substantial bridge (not less than fourteen feet in breadth), over such water-course where it crosses said road. [C. L. 1876, ch. 65, § 11.]

When commissioners to bridge ditches—Expenses.

SEC. 1326. When any such ditch or water-course shall be constructed across any public traveled road, and not bridged within three days thereafter, it shall be the duty of the county commissioners of the county in which said ditch and road are located, to put a bridge over said ditch or water-course, of the dimensions specified in the foregoing section, and call upon the owner or owners of the said ditch or water-course, to pay the expenses of constructing said bridge, and if payment therefor be refused, a civil action may be maintained for the recovery of the same, together with all accruing costs. [C. L. 1876, ch. 65, § 12.]

Claim for right of way may be arbitrated.

SEC. 1327. Upon the refusal of the owner or owners of land or lands through which any person or persons are desirous of constructing any irrigation ditch or ditches, then it shall be lawful for the parties interested to settle the matter by the appointment of a board of arbitration consisting of three men as hereinafter provided. [S. L. 1882, ch. 57, § 1.]

Appointment and proceedings of arbitrators.

SEC. 1328. The creation of the board of arbitration shall be as follows: The person or persons desiring the construction of such ditch or ditches, and the owner or owners of the land or lands through which the construction of such ditch or ditches is contemplated, shall each choose one disinterested resident property holder of the county in which the land or lands mentioned above are situated, and the two so chosen shall designate a third person with like qualifications as themselves, and it shall be lawful for these persons to immediately proceed to hear the proof and allegations of the parties concerned. It shall be lawful for any two of such board of arbitration to make such assessment of damages as may in their judgment be deemed just and right, taking into consideration the benefits, if any, that may accrue to the owner or owners of the land or lands through which the construction of such ditch or ditches is contemplated. [S. L. 1882, ch. 57, § 2.]

Appeal to commissioners.

SEC. 1329. Should the verdict or assessment of such board of arbitration be unsatisfactory to either or both of the parties interested, then recourse may be had by an appeal made in writing within ten days from the rendering of such verdict by such board of aribtration, addressed to the board of county commissioners of the county in which the contestants reside; in which case the party taking the appeal shall give bonds for all the costs, then the case shall stand as though no action had been taken in the matter and the parties may then proceed under this chapter in the same manner as though the proceedings to ascertain the compensation to be given had been taken before the county commissioners in the first instance. [S. L. 1882, ch. 57, § 3.]

For proceedings before commissioners see §§ 1320 and 1321.

If no appeal taken award is final.

SEC. 1330. In case no appeal be taken as above provided by either of the parties interested, then the finding of such board of arbitration shall be binding and final; *Provided*, The sum of money agreed upon by the board of arbitration has been tendered or paid, or a deed for such right of way executed and delivered or tendered by the party or parties over whose land the right of way is sought. [S. L. 1882, ch. 57, § 4.]

CHAPTER 2.

APPROPRIATION OF WATER—PROCEDURE.

1331. Irrigation districts defined and numbered.
1332. Appointment of water commissioners.
1333. Oath of commissioners.
1334. Duties of commissioners.
1335. Molesting head-gates, etc.—Penalty—Commissioners may make arrests.
1336. Compensation of commissioners.
1337. Employment of assistant commissioners—Compensation.
1338. Commissioners to perform duties only when necessary.
1339. Jurisdiction of courts to settle water rights
1340. Statement of existing water rights to be filed, etc.
1341. Filing and index of statement.
1342. Fees of clerk of court.
1343. Statement of contemplated ditch—Apportionment of water—Construction to begin in sixty days.
1344. Streams open to appropriation.
1345. Manner of determining priority of water rights in district court.
1346. Notice of trial of rights to water.
1347. Destroying water improvements—Penalty.
1348. Appeal to supreme court—Notice—Undertaking.
1349. Service of notice in case of appeal.
1350. Transcript to be filed in six months.
1351. Decree of supreme court.
1352. Effect of failing to offer evidence of priority of water rights.
3353. Effect of failure to file statement of water right.
1354. Decision may be reviewed in district court.
1355. Right of persons constructing reservoirs.
1356. Liability of owners of reservoirs.
1157. Fees of witnesses.
1358. Rights of incorporated companies to take water.
1359. Water commissioners to prevent waste of water.
1360. Ditch owners to protect fish.
1361. Vested rights preserved.

Irrigation districts defined and numbered.

SEC. 1331. The lands now irrigated, or which may be hereafter irrigated from ditches, taking water from the following described rivers and natural streams of the Territory of Wyoming, are hereby declared to constitute irrigation districts:

District number one shall consist of all lands irrigated from ditches from the North Platte river and its tributaries, except the Laramie river, between its intersection with the boundary line between Nebraska and Wyoming, and its intersection with the western boundary line of Laramie County, Crow creek, Lone Tree creek, Pole creek, Horse creek, Chugwater creek, Cheyenne river, Niobrara or Running Water river, and their tributaries.

District number two shall consist of all lands irrigated from ditches taking water from the Laramie river, and tributaries, except Chugwater creek, North Platte river, and its tributaries, between its intersection with the western boundary line of Laramie County, and the mouth of the Sweetwater, Sabille creek and North Laramie creek; and also the following named streams, situate in whole or in part in the County of Albany, namely: Douglass creek, Lake creek, the three Beaver creeks, Four Mile creek, Dutton creek, Cooper creek, Rock creek, and tributaries, Sabille, Sheep creek, Deer creek, and tributaries, Antelope creek, Fish creek and its tributaries, Dale creek, and its tributaries, and also the following named lakes, to-wit: Cooper lake, James lake, Ione lake, Sportsman's lake, Lake Hutton, Lake Creighton, Lake George, Steamboat lake, Horse Creek lake, Lake Hattie, and Lake Owen.

District number three shall consist of all lands irrigated from ditches taking water from the North Platte river and its tributaries to the line of Carbon County, and all streams or continuations of streams lying within Carbon County.

District number four shall consist of all lands irrigated from ditches taking water from the Green river and its tributaries.

District number five shall consist of all lands irrigated from ditches taking water from the Powder, Tongue and Big Horn rivers and their tributaries, except Wind river.

District number six shall consist of all lands irrigated from ditches taking water from the Little Powder river, Little Missouri river and the Belle Fourche and their tributaries.

District number seven shall consist of all lands irrigated from ditches taking water from that portion of Green river lying within Uinta County and Bear river.

District number eight shall consist of all lands irrigated from ditches taking water from Wind river to Johnson County line.

Other irrigation districts may be formed from time to time by the governor, on petition of the parties interested, comprising territory not within any of the above established irrigation districts. [S. L. 1886, ch. 61, § 1.]

Appointment of water commissioners.

SEC. 1332. There shall be one water commissioner for each of the above named districts, and for each district hereafter formed, who shall be appointed by the governor, to be selected by him from persons recommended to him by the several boards of county commissioners of the counties into which water districts may extend, and the water commissioners so appointed shall hold their office for two years, or until their successor is appointed and qualified. The governor, by like selection and appointment, shall fill all vacancies which may be occasioned by death, resignation, or continued absence from the district, removal or otherwise, and the governor may at any time remove any water commissioner for failure to perform his duties, or for any other cause. [S. L. 1886, ch. 61, § 2.]

Oath of commissioners.

SEC. 1333. Within twenty days after his appointment, and before entering upon the duties of his office, such water commissioner shall take and subscribe an oath to faithfully and impartially perform the duties of his office, which oath shall be deposited with the clerk of the court having jurisdiction over the priority of rights to use of water in his district. [S. L. 1886, ch. 61, § 3.]

Duties of commissioners.

SEC. 1334. It shall be the duty of the said water commissioners to divide the water in the natural stream or streams of their districts, among the several ditches taking water from the same, according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut and fastened, the head gates of any ditch or ditches heading in any of the natural streams of the district, which in time of a scarcity of water, makes it necessary, by reason of the priority of the rights of others above or below them on the stream. [S. L. 1886, ch. 61, § 4.]

Molesting head-gates, etc.—Penalty—Commissioners may make arrests.

SEC. 1335. Every person who shall wilfully open, close, change, or interfere with any head-gate or water box without authority shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail for a term not exceeding six months, or both fine and imprisonment. The water commissioners or their assistants, within their districts, shall have authority to arrest any person or persons offending, and turn them over to the sheriff of the proper county. [S. L. 1886, ch. 61, § 5.]

Compensation of commissioners.

SEC. 1336. The water commissioners herein provided shall be entitled to pay at the rate of five dollars per day for each day he shall be actually employed in the duties of his office, not to exceed fifty days in any one year, to be paid by the county in which his irrigation district may lie. Each water commissioner shall keep a just and true account of the time spent by him in the duties of his office, and shall present a true copy thereof, verified by oath, to the board of county commissioners of the county in which his district may be, and said board of county commissioners shall allow the same, and if said irrigation district shall extend into two or more counties then said water commissioner shall present his account for his said services, verified as aforesaid, to the board of county commissioners of the county in which sits the district court having jurisdiction over the priorities of the rights to use of water for the purposes for which it was appropriated in such districts. [S. L. 1886, ch. 61, § 6.]

Employment of assistant commissioners—Compensation.

SEC. 1337. Said water commissioners shall have power, in case of emergency, to employ suitable assistants to aid him in the discharge of his duty; such assistants shall take the same oath as the water commissioner and shall obey his instructions, and each shall be entitled to four dollars per day for every day he is employed, not to exceed thirty-five days in any one year, to be paid upon the certificate of the water commissioner in the same manner as is provided for payment of water commissioners. [S. L. 1886, ch. 61, § 7.]

Commissioners to perform duties only when necessary.

SEC. 1338. Said water commissioners shall not begin their work until they shall be called on by two or more owners or managers, or persons controlling ditches in the several districts, by application in writing, stating that there is a necessity for their action, and they shall not continue performing services after the necessity therefor shall cease. [S. L. 1886, ch. 61, § 8.]

Jurisdiction of courts to settle water rights.

SEC. 1339. For the purpose of hearing, adjudicating and settling all questions concerning the priority of appropriation of water, between ditch companies and other owners of ditches, drawing water for beneficial purposes, from the same stream, or its tributaries, within the same irrigation district, and all other questions of law and questions of right growing out of or in any way involved or connected therewith, jurisdiction is hereby vested, exclusively in the several district courts, as follows: For district number one, in the district court of Laramie County; for district number two, in the district court of Albany County; for district number three, in the district court of Carbon County; for district number four, in the district court of Sweetwater County; for district number five, in the district court of Johnson County; for district number six, in the district court of Crook County; for district number seven, in the district court of Uinta County; for district number eight, in the district court of Fremont County. All streams, lakes and reservoirs not herein enumerated shall be, for all purposes, attached to and belong to the irrigation district in which the greater portion of its water is, it being the intent and meaning hereof to add to each irrigation district all waters not hereinbefore enumerated the majority of which lie within their respective areas, for the purposes of acquiring rights to the appropriation and use thereof and adjudicating the same. [S. L. 1886, ch. 61, § 9.]

Statement of existing water rights to be filed, etc.

SEC. 1340. In order that all parties may be protected in their lawful rights to the use of water for beneficial purposes, every person, association or corporation, owning or claiming any interest in any ditch, canal or reservoir, within any water district shall, on or before the first day of September, eighteen hundred and eighty-six, if such statements are not already matters of record at the time this act is approved, file with the clerk of the district court having jurisdiction of priority of rights to the use of water for irrigation, in such water district, a statement of claim, under oath, entitled of the proper court, which statement shall contain the name or names, together with the postoffice address of the claimant or claimants claiming ownership, as aforesaid, of any such ditch, canal or reservoir, the name thereof (if any), and if without a name, the owner or owners shall choose and adopt a name, to be therein stated, by which such ditch, canal or reservoir shall thereafter be known. The description of such ditch, canal or reservoir as to location of head-gate, general course of ditch, the name of the natural stream from which such ditch, canal or reservoir draws its supply of water, the length, width, depth and grade thereof, as near as may be, the time, fixing a day, month and year, as the date of appropriation of water by original construction, also by any enlargement or extension, if any such thereof have been made, and the amount of water claimed by or under such construction, enlargement or extension, and the present capacity of the ditch, canal or feeder or reservoir, and also the number of acres of land lying under and being, or proposed to be, irrigated by water from such ditch, canal or reservoir; or if such waters have been appropriated for other beneficial purposes than irrigation, a statement of such purpose; such statement shall be signed by the proper party or parties; and shall file with the county clerk and *ex-officio* register of deeds a like statement, which shall be recorded by him in a book kept for that purpose. [S. L. 1886, ch. 61, § 10.]

Filing and index of statements.

SEC. 1341. Upon the filing of such statement, the clerk of the court shall endorse upon the back thereof the date of filing, and shall prepare an index of the same, in a book to be provided for that purpose by the county commissioners, which said index shall contain the date of filing, the name of the party, association or corporation, the name of the ditch, the stream from which the water is taken by such ditch, canal or reservoir, in general terms, the location of the head-gate, the date of the appropriation of the water, by construction, enlargement or extension; said index shall be prepared alphabetically, by reference to the name of the ditch, canal or reservoir. [S. L. 1886, ch. 61, § 11.]

Fees of clerk of court.

SEC. 1342. For filing and indexing such statement, the clerk of the court shall receive a fee of one dollar, to be paid by the party or parties filing the same. [S. L. 1886, ch. 61, § 12.]

Statement of contemplated ditch—Appropriation of water—Construction to begin in sixty days.

SEC. 1343. Hereafter every person, company or corporation, constructing, enlarging or extending any ditch, canal or reservoir for beneficial purposes, and intending to use or appropriate any water from any natural stream within a water district, for such beneficial purposes, shall file with the county clerk and *ex-officio* register of deeds and the clerk of the district court, of the proper county, before the commencement of the construction, enlargement or extension of such ditch, canal or reservoir, a statement showing the stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch or ditches as near as may be; the use or uses to which said water is intended to be applied; the dimensions of such ditch or ditches, and each thereof, giving width on bottom and top, slope of banks, and grade of ditch; and likewise of any and all enlargements thereof; which statement shall be filed and indexed as is provided in section thirteen hundred and forty, and from the time of filing any such statement water sufficient to fill such ditch or ditches, and to subserve the use or uses aforesaid, if a lawful and just use, shall be deemed and adjudged to be appropriated; *Provided*, That nothing herein contained shall be permitted to interfere with a prior right to said water, or to any thereof; *And, provided further*, That such person or persons or corporation, shall, within sixty days next ensuing the filing of such statement, begin the actual construction of said ditch or ditches, and shall prosecute the work of the construction thereof diligently and continuously to its completion; *And, provided further*, That the beginning of all necessary surveys of such ditch shall be construed as the beginning of said work of construction. [S. L. 1886, ch. 61, § 13.]

All streams open to appropriation.

SEC. 1344. The water of every natural stream not heretofore appropriated within this territory is hereby declared to be the property of the public and the same is dedicated to the use of the people, subject to appropriation as herein provided. The provisions of this chapter shall apply to all cases where water of natural streams is appropriated for beneficial purposes, whether the water be conducted through ditches, canals, flumes or tunnels, and shall apply also to cases where for irrigation purposes the water is stored in reservoirs and the owner or owners of any ditch, canal, flume or tunnel through which water is conducted for irrigation purposes, and also the owners of reservoirs may conduct the water therefrom into and along any of the natural streams of the territory, but not so as to raise the waters thereof above high water mark, and may take the same out again at any point desired, but due allowance shall be made for evaporation and seepage, the amount to be determined by the water commissioner of the proper district, subject to review and determination by the court having jurisdiction over priorities in such district. [S. L. 1886, ch. 61, § 14.]

Manner of determining priority of water rights in district court.

SEC. 1345. Whenever any person or persons, association or corporation, interested as owners of any ditch, canal or reservoir, in any district, shall desire a determination of the priorities of rights to the use of water from stream or streams, from which they draw the water for their ditch or ditches, canals or reservoirs, they shall present to the district court having jurisdiction over the rights in such water district, or to the judge thereof in vacation, a motion, petition or application in writing, moving or praying said court to proceed to an adjudication of the priorities of rights to the use of water for irrigation, between the several ditches, canals or reservoirs in such district, on the stream or streams named in the motion, petition or application. The said motion, petition or application shall state the names of the ditches, canals or reservoirs, claiming water from said stream or streams, as appears by the final statements in the clerk's office, together with the names of the persons, associations or corporations interested therein, taken from said statements, and shall set forth the nature of the claim or claims of the applicant or applicants, and such motion, petition or application shall be entitled "in the matter of an application for an adjudication of the priorities of rights to use water for beneficial purposes in water district number ———, on —————————," (stating the stream or streams). Upon the filing and docketing of such application, the court, or judge thereof, in vacation, shall without unnecessary delay, by an order to be entered of record, upon such motion, petition or application, appoint a day, in some regular term of said court, or in vacation thereof, for commencing to hear and take evidence in such adjudication, at which time it shall be the duty of the court, or judge thereof, in vacation, to proceed and hear all evidence that may be offered by or in behalf of any person, association or corporation interested in such stream or streams in such district, in any ditch, canal or reservoir, either as owner or consumer of water therefrom, in support of or against any claims of priority of appropriation of water made by means of any ditch, canal or reservoir, or by an enlargement or extension thereof in such district, or on such stream or streams, and consider all such evidence, also the arguments of the parties or their counsel, and shall ascertain and find from such evidence, as near as may be, the date of the commencement of such ditch, canal or reservoir, together with the original size and carrying capacity thereof as originally constructed, the time of the commencement of each enlargement or extension thereof, if any, with the increased capacity thereby occasioned, the time spent severally in such construction, enlargement, or extension and re-enlargement, if any, the diligence with which the work was in each case prosecuted, the nature of the work as to the difficulty of construction, and all such other facts as may tend to show the compliance with the law in acquiring the priority of right claimed for each such ditch, canal or reservoir, and determine the matters put in evidence, and make and cause to be entered, a decree determining and establishing the several priorities of right, by appropriation of water, of the several ditches, canals and reservoirs, in such water district, in such stream or streams, concerning which testimony shall have been offered, each according to the time of its said construction and enlargement or enlargements and extensions, with the amount of water which shall be held to have been appropriated by such construction and enlargement, or extensions, describing such amount by cubic feet per second of time (which shall also be the method of measurement for the sale of water), if the evidence shall show sufficient data to ascertain such cubic feet, and if not, by width, depth and grade, and such other description as will most certainly and conveniently show the amount of water intended, as the capacity of such ditch, canal or reservoir in such decree. Such court or judge thereof, in vacation, shall further order that each and every person interested or claiming any such ditch, canal or reservoir, shall receive from the clerk on payment of a reasonable fee therefor, to be fixed by the court or judge, in vacation, a certificate under seal of the court, showing date or dates, and amount or amounts of appropriations adjudged in favor of such ditch, canal or reservoir, under and by virtue of the construction, extension and enlargement thereof severally, also specifying the number of said ditch as determined by the court, with reference to priority, and of each priority to which the same may be entitled by reason of said construction, extension and enlargement; *Provided*, That any party or parties claiming any right to the use of water for beneficial purposes in such district, and on such stream or streams, by reason of being owner of or interested in any ditch, canal or reservoir who is not mentioned in the motion, petition or application filed and presented to the court, shall be notified by the clerk of such application, and shall become parties to such proceedings, and shall have their rights adjudicated therein. The court or judge thereof, in vacation, may, instead of taking the testimony orally or in open court, refer the matter to some person to take and reduce to writing the testimony to the court or judge thereof, in vacation, and the person to whom such cause shall be referred for that purpose, shall have the same power and duties concerning the taking of testimony, and compelling the attendance of witnesses, as masters in chancery. [S. L. 1886, ch. 61, § 15.]

Notice of trial of rights to water.

SEC. 1346. Upon the order of the court fixing the time of hearing being made, the clerk shall place a certified copy of such order, which order shall contain the names of all the parties alleged in application to be interested in the matter, in the possession of the sheriff of the proper county, which shall be thereupon served upon each of the parties therein named in the same manner as a summons, and a return of the service shall be made and filed with the clerk within fourteen days after the delivery of said order to the sheriff, or if served by any other person, in cases where a summons could be served, then return shall be made within fourteen days after date of order. It shall be the duty of the clerk also to give public notice of such application and order, by publication in a newspaper, if any be printed and in circulation, in some county wherein such water district is situated, which notice shall be published at least once each week for two consecutive weeks, and which said notice shall contain the date of the filing of said motion, petition or application, the name or names of the parties filing the same, a copy of the order made by the court for hearing, and shall notify all parties interested as owners in any ditch, canal or reservoir on such stream or streams in such water district, as well as the persons named in the motion, petition or application, to appear at said court or before the judge thereof, in vacation, at the time appointed and stated in the order, and that all persons interested as owners or consumers may then and there present his, her or their proofs for or against any priority of right of water by appropriation sought to be shown by any party, by or through any ditch, canal or reservoir (either as owner or consumer of water drawn therefrom), and in case any party mentioned in the motion, petition or application cannot be personally served in any county embraced in such water district, the published notice above provided shall be deemed sufficient service of notice; *Provided further*, That in addition to such publication the clerk shall mail such published notice to each party mentioned in the motion, petition or application, directing the same to the address of such parties as stated in the sworn statement on file. Proof of the proper publication shall consist in the sworn certificate of the publisher of the paper in which notice is published, to which shall be attached a printed copy taken from such paper. [S. L. 1886, ch. 61, § 16.]

Destroying water improvements—Penalty.

SEC. 1347. Any person or persons who shall knowingly and wilfully cut, dig, or break down, or open any gate bank, embankment, or side of any ditch, canal, or reservoir, flume, tunnel, or feeder in which such person or persons may be joint owners, or on the property of another, or in the lawful possession of another or others, and used for the purpose of irrigation, milling, manufacturing, mining or domestic purposes, with intent maliciously to injure any person, association, or corporation, or for his or her own gain, unlawfully, with the intention of stealing, taking, or causing to run, or pour out of such canal, or reservoir feeder, or flume, any water for his or her own profit, benefit, or advantage, to the injury of any other person, persons, association, or corporation lawfully in the use of such water, or of such ditch, canal, tunnel feeder or flume, he, she, it, or they, so offending, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding one hundred dollars, and may be imprisoned in the county jail, not exceeding six months, or both, at the discretion of the court. [S. L. 1886, ch. 61, § 17.]

Appeal to supreme court—Notice—Undertaking.

SEC. 1348. Any party or parties, representing any ditch, canal, or reservoir, or any number of parties, representing two or more ditches, canals, or reservoirs, which are affected, in common with each other, by any portion of the decree rendered by the district court, by which he, she, it, or they, may feel aggrieved, may have an appeal from said district court to the supreme court, and in such case the party, or parties, joining, desiring an appeal, shall be the appellants, and the parties representing any one or more ditches, canals, or reservoirs, affected in common, adversely to the interests of appellants, shall be appellees. The party, or parties, in such appeal shall, within sixty days after the date of the decree, file in the district court wherein any decree is entered under this chapter, a notice of appeal in writing, stating that such party, or parties, appeals to the supreme court of the territory from the decree rendered in the case, or any part thereof. When only a part of the decree is appealed from, the notice of the appeal should so state, and shall also in that case specify the portion or part of the decree appealed from. Upon filing of such notice of appeal the cause shall be deemed to be appealed to the supreme court of the territory; *Provided, however*, That the party, or parties, appealing as aforesaid, shall, within sixty days aforesaid, enter into an undertaking, to be approved by the district court, or judge thereof, and to be given to all parties in said suit or proceeding, other than the parties appealing, and to be in such an amount as the court or said judge shall fix; conditioned that the parties giving their said undertaking shall prosecute their appeal to effect, and without unnecessary delay, and will pay all costs and damages which the parties to whom the undertaking is given, or either, or any of them, may sustain in consequence of such appeal. [S. L. 1886, ch. 61, § 18.]

Service of notice in case of appeal.

SEC. 1349. The order last aforesaid shall be entered of record, and the appellant, or appellants, shall cause a certified copy thereof to be served on each of the appellees, by delivering the same to him, or her, if he or she may be found, or otherwise serving the same, in manner the same, as may be provided for serving summons from the district court by the laws then in force. [S. L. 1886, ch. 61, § 19.]

Transcript to be filed in six months.

SEC. 1350. The appellant, or appellants, shall within six months after the appeal be allowed as aforesaid, file in the office of the clerk of the supreme court of this territory, a certified transcript of the proceedings had in the case in the district court, containing the pleadings and the statements of the parties filed herein, and all evidence of record offered on the hearing of the cause, or so much thereof as shall effect the appropriation of water claimed by the means of construction, enlargement or re-enlargement of the several ditches, canals and reservoirs mentioned in the order, allowing the appeal. When the evidence has been taken in the open court, or before the judge, in vacation, such evidence, or the substance thereof, reduced to writing and signed by the judge, or in case notes of said testimony have been taken by the official stenographer, a transcription of the same, signed by the stenographer and attested by his official seal, filed with the clerk of the court, shall be deemed a record of the evidence taken in said court. [S. L. 1886, ch. 61, § 20.]

Decree of supreme court.

SEC. 1351. The supreme court, in all cases heard before it under this chapter, shall, where it can properly be done, render such decree as the court, or the judge below, should have rendered. It may either reverse or modify the decree of the court or judge below, and in cases where the decree of the court below is reversed, in whole or in part, it may direct the court below as to its further proceedings therein. [S. L. 1886, ch. 61, § 21.]

Effect of failing to offer evidence of priority of water right.

SEC. 1352. No claim of priority of any person, association or corporation, on account of any ditch, canal or reservoir, as to which he, she, it or they have failed or refuse to offer evidence, under any adjudication herein provided for, shall be regarded by any water commissioner in distributing water in times of scarcity thereof, until such time as such party shall have by application to the court, having jurisdiction, obtained leave, and made proof of the priority of right, to which such ditch, canal or reservoir shall be justly entitled, which leave shall be granted in all cases upon terms as to notice to other parties interested, and upon payment of all costs, and upon affidavit or petition sworn to, showing the rights claimed, and the ditches, canals and reservoirs, with the names of the owners thereof, against which such priority is claimed, nor until a decree adjudging such priority to such ditch, canal or reservoir has been entered, and certificate such as mentioned in section thirteen hundred and forty-six, shall have been issued to claimant and presented to the water commissioner. [S. L. 1886, ch. 61, § 22.]

Effect of failure to file statement of water right.

SEC. 1353. No person, association or corporation representing any ditch, canal or reservoir, shall be permitted to give or offer any evidence before said court until he, she, it or they shall have filed a statement of claim, in substance the same in all respects as is required to be filed under the provisions hereof. [S. L. 1886, ch. 61, § 23.]

Decision may be reviewed in district court.

SEC. 1354. The district court, or judge thereof, in vacation, shall have power to order for good cause shown, upon terms just to all parties, and in such manner as may seem meet, a reargument or review, with or without additional evidence, of any decree made under the provisions of this chapter, whenever said court or judge shall find from the cause shown for that purpose by any party, or parties, feeling aggrieved, that the ends of justice will be thereby promoted, but no such review or reargument shall be ordered unless applied for by petition or otherwise, within two years of the time of entering the decree complained of. [S. L. 1886, ch. 61, § 24.]

Rights of persons constructing reservoirs.

SEC. 1355. Persons desiring to construct and maintain reservoirs for the purpose of storing water, shall have the right to take from any of the natural streams of the territory and store away any unappropriated water not needed for immediate use, for domestic or irrigation or other beneficial purposes, to construct and maintain ditches, canals, flumes or tunnels, for carrying such water to and from such reservoirs, ditches, canals, tunnels and flumes, in the same manner provided by law for the condemnation of lands for right of way for ditches; *Provided*, No reservoir with embankments or a dam exceeding ten feet in height, shall be made without first submitting the plans thereof to the county commissioners of the county in which it is situated, and obtaining their approval of said plans; *and*, *provided further*, That no such reservoir shall be constructed or made in or across the channel of any natural and running stream. [S. L. 1886, ch. 61, § 25.]

Liability of owners of reservoirs.

SEC. 1356. The owners of reservoirs shall be liable for all damage arising from leakage or overflow of the waters therefrom, or by floods caused by breaking of the embankments of such reservoir. [S. L. 1886, ch. 61, § 26.]

Fees of witnesses.

SEC. 1357. Every witness who shall attend before the court, or the judge thereof in vacation, or before the person appointed to take testimony, in the causes provided for in this chapter, under subpœna, by request of any party, shall be entitled to the same fees and mileage as witnesses in civil cases in the district court, and shall be paid by the party requiring his testimony. [S. L. 1886, ch. 61, § 27.]

Rights of incorporated companies to take water.

SEC. 1358. It shall not be necessary for any corporation heretofore organized and now existing, or for any corporation hereafter organized, under the laws of this territory, which has heretofore, or shall have hereafter constructed, operated or maintained, any ditches, canals, flumes, tunnels or reservoirs, or other appropriations of water, for the purpose of irrigation, mining, manufacturing, domestic uses, or for any beneficial purpose whatever, to incorporate as a ditch company, or companies, if the objects or purposes for which such corporation shall have been formed or incorporated, imply, permit or make necessary, or advantageous, such use or uses of water; and such corporation for all the purposes of this chapter shall have all the rights of a natural person as defined herein, and shall have its rights determined in the same manner; *Provided*, No priority of water right shall take from any city or town the water required for the use of the residents thereof. [S. L. 1886, ch. 61, § 28.]

Water commissioners to prevent waste of water.

SEC. 1359. Said water commissioners shall so divide, regulate and control the use of the water of all streams within their respective districts in such manner, as near as may be, as will prevent unnecessary waste of water, and to that end such commissioners shall so shut and fasten the head-gate or gates of all ditches so that no more water will flow into said ditch than is actually required and will be used for the uses or purposes for which such water was appropriated, and any person who may be injured by the action of any water commissioner or by his failure to act pursuant to this chapter, may resort to any court of competent jurisdiction for such relief as he may be entitled to. [S. L. 1886, ch. 61, § 29.]

Ditch owners to protect fish.

SEC. 1360. It shall be the duty of every person, corporation or company, who shall construct, maintain or operate any ditch or canal under the provisions of this chapter to construct and maintain, at the point and place where the water is diverted from its natural channel, some fit and proper obstruction whereby all fish will be prevented from entering said ditch or canal. Any person, company or corporation violating the provisions of this section shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not less than ten nor more than sixty days, or by both such fine and imprisonment. [S. L. 1886, ch. 61, § 30.]

Vested rights preserved.

SEC. 1361. This chapter shall in no wise be construed as impairing or abridging any rights already vested in any person or persons, company or corporation by virtue of the law heretofore in force. [S. L. 1886, ch. 61, § 31.]

CHAPTER 3.

OFFICIAL SURVEY OF DITCHES.

SECTION.
1362. Surveyor to measure ditches.
1363. Deputy surveyor—Ditch certificate.
SECTION.
1364. Filing and verification of certificate.
1365. Compensation of surveyor.

Surveyor to measure ditches.

SEC. 1362. It shall be the duty of the county surveyor of the county wherein is located a district court having jurisdiction over any water district in this territory, on or before the first day of August, eighteen hundred and eighty-six, to make or cause to be made careful measurements, and ascertain the carrying capacity of every ditch, canal or feeder, and every reservoir within the water district over which such court has jurisdiction, constructed prior to said first day of August, eighteen hundred and eighty-six, and he shall make or cause to be made like measurements of every new ditch constructed after said first day of August, eighteen hundred and eighty-six, and shall issue certificates of all ditches so measured, as hereinafter provided. [S. L. 1886, ch. 98, § 1.]

Deputy surveyor—Ditch certificate.

SEC. 1363. The county surveyors of the counties mentioned in the preceding section shall have authority to appoint competent deputies to perform the work mentioned in the preceding section, and the county surveyor and his deputy or deputies performing the work shall give to each person or persons, company or corporation owning a ditch, canal, feeder or reservoir, within his water district, an official certificate of the size and carrying capacity of the ditch, canal, feeder or reservoir, owned by said person or persons, company or corporation, in cubic feet per second, as he shall find it to be at the time of measuring the same. [S. L. 1886, ch. 98, § 2.]

Filing and verification of certificate.

SEC. 1364. The certificate of the county surveyor, or his deputy, shall be filed with the clerk of the court having jurisdiction over such water district, by the person or persons, company or corporation to whom the same is issued, within thirty days after the same is given by the surveyor, and such certificate, before the same is delivered, shall be verified by the surveyor or deputy making such measurements, and in such verification shall be stated and shown the average width of the ditch thus measured, on its top and bottom, slope of its banks and its grade, and giving in cubic inches its carrying capacity, and such certificate, thus verified, shall be received by the courts of this territory as *prima facie* evidence of the carrying capacity of such ditch. [S. L. 1886, ch. 98, § 3.]

Compensation of surveyor.

SEC. 1365. The surveyor and his deputies shall receive such compensation for making said measurements as may be allowed by the district court, upon a showing made by the surveyor or his deputy, of the time occupied and expense incurred by him in making such measurement, and said court shall have authority and it shall be its duty, to appportion said expenses between the several owners of ditches within such water district. [S. L. 1886, ch. 98, § 4.]

TITLE 20. JAILS.

CHAPTER 1.

GENERAL PROVISIONS.

SECTION.
1366. Every county to have a jail.
1367. Inspection of, by grand jury.
1368. Sheriff to keep jail—Precautions when jail insecure.
1369. Restrictions on jail expenses.
1370. Record of process relating to prisoners.
1371. Sheriff to care for prisoners.
1372. Sheriff to visit jail and cause same to be cleansed.
1373. Spirituous liquors not permitted in jail.
1374. Penalty for violating last section.
1375. United States prisoners—Custody of.
SECTION.
1376. Removal of prisoners in case of fire.
1377. Sheriff and prisoners not subject to arrest.
1378. Refractory prisoners—Punishment.
1379. Juvenile prisoners to be kept in separate apartments.
1380. Jail register to be kept by sheriff.
1381. Procedure in building jail.
1382. Awarding contract.
1383. Security required of bidder.
1384. Payment for jail.
1385. Special jail tax.

Every county to have a jail.

SEC. 1366. There shall be established and kept in every organized county of this territory, by the board of county commissioners at the expense of the county, as hereinafter provided, a jail for the safe keeping of prisoners lawfully committed. [C. L. 1876, ch. 66, § 1.]

Inspection of, by grand jury.

SEC. 1367. The grand jury, at each term of the district court, shall make personal inspection of the county jail, as to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term; and the court shall give this in charge to the grand jury, and it shall be imperative on the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs in accordance with the complaint or recommendation of the grand jury. [C. L. 1876, ch. 66, § 2.]

Sheriff to keep jail—Precautions when jail insecure.

SEC. 1368. The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept; he shall keep separate rooms for the sexes, except when they are lawfully married; he shall supply bread, meat, drink and fuel, for the prisoners; and whenever, in consequence of the insecurity of the jail, or number, or desperate character of any of the prisoners confined therein, the sheriff shall deem it necessary to have a jailor or guard, it shall be his duty to report the matter to the chairman of the board of county commissioners, or to any member of the board, who shall forthwith call a meeting of the board, stating its object, when the matter shall be immediately investigated, and the board shall make such arrangements as in their opinion are necessary to secure the safety of the jail and prisoners therein. [C. L. 1876, ch. 66, § 3. S. L. 1879, ch. 49, § 1.]

Restrictions on jail expenses.

SEC. 1369. Nothing in this chapter shall be construed as authorizing any board of county commissioners in giving any extra compensation to any sheriff for performing the duties required of him by this chapter, nor of incurring any expense on behalf of the county, without authority in writing of the board of county commissioners, except as otherwise specially provided. [S. L. 1879, ch. 49, § 2.]

Record of process relating to prisoners.

SEC. 1370. All instruments, writs, or process of any kind, or attested copies thereof, by which any prisoner may be committed or liberated, shall be regularly indorsed and filed in some suitable and safe place, and all such documents shall be delivered to the successor of the officer having charge of the prisoner, or succeeding to the office of sheriff. [C. L. 1876, ch. 66, § 5.]

Sheriff to care for prisoners.

SEC. 1371. It shall be the duty of the sheriff to provide such bed clothing, frames and sacks for beds, night buckets, suitable means for warming the jail, medical attendance and nursing, when required, and such other necessaries for the comfort and welfare of said prisoners as the grand jury may recommend, and the expenses thereof shall be audited and settled by the county commissioners as in the case of other general county expenses. [C. L. 1876, ch. 66, § 6.]

Sheriff to visit jail and cause same to be cleaned.

SEC. 1372. It shall be the duty of the sheriff to visit the jail in person, at least once in each month, unless absent from the county, and examine into the condition of each prisoner, and at least once during each term of the district court; and it is hereby made the duty of the sheriff to cause all the cells and rooms used for the confinement of prisoners, to be thoroughly cleansed and whitewashed, at least three times in each year. [C. L. 1876, ch. 66, § 7.]

Spirituous liquors not permitted in jail.

SEC. 1373. No spirituous liquors shall, on any pretense whatsoever, be sold within any building used and established as a jail; nor shall any spirituous liquors be conveyed into any jail for the use of any person confined therein, or be furnished to any prisoner unless the same be certified to be absolutely necessary for the health of such prisoner, by some reputable physician, who shall specify the quantity and quality of the liquor that may be furnished to any prisoner, the name of the prisoner for whom, and the time when the same may be furnished. [C. L. 1876, ch. 66, § 8.]

Penalty for violating last section.

SEC. 1374. Every person who shall sell, bring, or convey, into any jail, any spirituous liquors, contrary to the provisions of the preceding section, and every sheriff or keeper of a jail, or any other officer or person employed in or about such jail, who shall knowingly suffer or permit any spirituous liquor to be sold or used in a jail, contrary to the foregoing provisions, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by imprisonment for not less than one month, nor more than one year, or by a fine of not less than fifty dollars, nor more than five hundred dollars. [C. L. 1876, ch. 66, § 9.]

United States prisoners—Custody of.

SEC. 1375. Every sheriff or keeper of a jail, to which any prisoner may be committed by any marshal or other officer of the United States, shall be answerable for the safe keeping of such prisoner, according to the terms of such commitment; and the money paid by the United States for the use of such jails shall be credited and appropriated to the general fund of the county wherein such jail is situated. [C. L. 1876, ch. 66, § 10.]

Removal of prisoners in case of fire.

SEC. 1376. Whenever, by reason of any jail being on fire, or any building contiguous, or near to a jail, being on fire, there shall be reason to apprehend that the prisoners confined in such jail may be injured or endangered by such fire, the sheriff or keeper of such jail, may, at his discretion, remove such prisoners to some safe and convenient place, and there confine them so long as may be necessary to avoid such danger; or, if the jail be destroyed, until some other place may be provided by the county commissioners for their safe keeping. [C. L. 1876, ch. 66, § 11.]

Sheriff and prisoners not subject to arrest.

SEC. 1377. Any sheriff or other officer who shall have arrested any prisoner or prisoners, may pass over, across and through any county or counties that may be in the ordinary route of travel from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered; and such prisoner or prisoners so conveyed, and the officers having them in custody, shall not be liable to arrest on any civil process while passing through such county or counties. [C. L. 1876, ch. 66, § 12.]

Refractory prisoners—Punishment.

SEC. 1378. If any person confined in any jail, shall be refractory or disorderly, or shall wilfully or wantonly destroy, or injure any article of bedding or other furniture, or any part of the prison, the sheriff may, after due inquiry, cause such person to be kept in solitary confinement, not more than five days for any one offense; and during such confinement, such prisoner shall be fed with bread and water only, unless other food be absolutely necessary for the preservation of his health. [C. L. 1876, ch. 66, § 13.]

Juvenile prisoners to be kept in separate apartments.

SEC. 1379. Juvenile prisoners shall, whenever practicable, be kept in apartments separate from elder prisoners; and the visits of parents and friends who desire to exert a moral influence over them, shall, at all reasonable times, be permitted. [C. L. 1876, ch. 66, § 14.]

Jail register to be kept by sheriff.

SEC. 1380. The sheriff or other officer performing the duties of sheriff, of each county in this territory, shall procure at the expense of the county, a suitable book, to be called a jail register, in which the sheriff, by himself or his jailor, shall enter:

First—The name of each prisoner, with the date and cause of his or her commitment;

Second—The date and manner of his or her discharge;

Third—What sickness, if any, has prevailed in the jail during the year;

Fourth—The practice observed during the year, of whitewashing and cleansing the cells or apartments, and the times and seasons for doing so;

Fifth—The habits of the prisoners as to cleanliness, diet and order, and such other matters as may be directed by the grand jury, or as may in the discretion of the sheriff be deemed proper. The register so directed to be kept, shall be delivered by the sheriff to his successor in office. [S. L. 1876, ch. 66, § 15.]

Procedure in building jail.

SEC. 1381. Whenever the board of county commissioners of any organized county in this territory, shall deem it for the interest of such county to have a jail constructed therein, they shall cause plans and specifications therefor to be prepared by some competent architect, for a jail, to cost not more in any case than five thousand dollars; and after such plans and specifications are prepared, and adopted by the board of county commissioners, they shall deposit the same in the office of the register of deeds for the county, where such plans and specifications shall be open and free to the inspection of any and all persons; and such board of county commissioners shall give notice that they will receive sealed proposals for the building of such jail, according to such plans and specifications, by publication in a newspaper once each week for four consecutive weeks, in any newspaper published within the county, if there be one, if not, then they shall cause at least five such notices to be posted in as many of the most public places of the county; such notices shall be to the effect that the commissioners will, until a day specified therein, not less than thirty days from publication of said notice, receive sealed proposals for the building of such jail, in whole or in parts, as to them shall seem to be for the best interests of the county; *Provided*, That the time occupied in building and completing such jail, shall in no case exceed six months from date of commencement of work on the same, which date shall be specified in the bids offered for such contract. Proposals shall be handed to the register of deeds for the county, in and for which such work is to be performed. [C. L. 1876, ch. 66, § 16.]

Awarding contract.

Sec. 1382. On the day appointed for the opening of such bids, the county commissioners shall meet and open and declare the same in public, and shall award the contract or contracts to the lowest bidder, who shall furnish security in double the amount of his contract, to the satisfaction of the board of commissioners, for the execution and completion of such contract. [C. L. 1876, ch. 66, § 17.]

Security required of bidder.

Sec. 1383. The bids above provided for, shall be accompanied by the guarantee of two or more responsible persons, that if the contract be awarded to the bidder, he will enter into the requisite bonds for the faithful performance of such contract. [C. L. 1876, ch. 66, § 18.]

Payment for jail.

Sec. 1384. One-half of the cost and expense of building such jail shall be paid in six months from the date of the contract for such work; the remaining half of the cost and expense of building such jail, shall be paid within one year from the completion of said jail. [C. L. 1876, ch. 66, § 19.].

Special jail tax.

Sec. 1385. For the purpose of constructing and paying for jails as provided in this chapter, the board of county commissioners of the organized counties of this territory, are hereby authorized and empowered to levy a special tax or taxes for that purpose, in addition to the tax authorized by chapter one of title forty-three. [C. L. 1876, ch. 66, § 20.]

TITLE 21. LANDLORD AND TENANT.

CHAPTER 1.

TENANCY BY SUFFERANCE.

SECTION.
1386. No implied tenancy except by sufferance.
SECTION.
1387. Renewal of lease to be in writing.

No implied tenancy, except by sufferance.

SEC. 1386. In this territory there shall not exist the relations of landlord and tenant, by implication or operation of law, except a tenancy by sufferance. Upon the expiration of a term created by lease, either verbal or written, there shall be no implied renewal of the same, for any period of time whatever, either by the tenant holding over or by the landlord accepting compensation or rent for or during any period of such holding over. Such holding over by the tenant and acceptance of rent by the landlord shall constitute only a tenancy by sufferance, with the rights, duties, obligations and incidents of such tenancy. [C. L. 1876, ch. 72, § 1.]

Renewal of lease to be in writing.

SEC. 1387. No lease which shall have expired by its own limitation shall be again renewed except by express contract in writing, signed by the parties thereto, whether the original lease be written or verbal. Nor shall any other tenancy than that by sufferance exist after the termination of the original lease, unless created as aforesaid, by express contract in writing. [C. L. 1876, ch. 72, § 2.]

TITLE 22. LANDS.

CHAPTER 1. DISPOSAL OF PUBLIC TOWN SITE LANDS.
CHAPTER 2. PLATTING AND DEDICATING TOWN SITES.
CHAPTER 3. POSSESSORY RIGHTS ON PUBLIC LANDS.

CHAPTER 1.

DISPOSAL OF PUBLIC TOWN SITE LANDS.

SECTION.
1388. Corporate authorities to sell town site lots.
1389. To whom conveyances made.
1390. Notice of receipt of patent.
1391. Statements of occupying claimants.
1392. Settlement of adverse claims.
1393. Appeal to supreme court.
SECTION.
1394. Patentee to make deeds.
1395. Limitation upon acquirement of lots.
1396. Sale of unclaimed lots.
1397. Original trustee to continue to act.
1398. When successor shall assume trust.
1399. Trustees may act through attorney.

Corporate authorities to sell town site lots.

SEC. 1388. When the corporate authorities of any city or town, or the judge of the district court for any county or district in this territory, in which any incorporated town may be situate, shall have entered at the proper land office the land or any part of the land settled and occupied as the site of such city or town, pursuant to and by virtue of the act of congress of the United States entitled "an act for the relief of the inhabitants of cities and towns upon the public lands," approved March second, eighteen hundred and sixty-seven, it shall be the duty of such corporate authorities or judge to dispose of and convey the title to such lands, or to the several blocks, lots, parcels or shares thereof to the persons hereinafter specified. [S. L. 1876, ch. 96, p. 507, § 1.]

To whom conveyances made.

SEC. 1389. Any such corporate authorities or judge, holding the title to any such land in trust, as declared in said act of congress, shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person or persons who shall have, possess or be entitled to the right of possession or occupancy thereof, according to his, her or their several and respective right or interest in the same, as they existed in law or equity at the time of the entry of such lands, or to his, her or their heirs or assigns, and when any parcel or share of such lands shall be occupied or possessed by one or more persons claiming the same by grant, lease or sale from one or more other persons, the respective right and interest of such persons in relation to each other in the same shall not be changed or impaired by any such conveyance. Every deed of conveyance made by such corporate authorities or judge, pursuant to the provisions of this chapter shall be so executed and acknowledged as to admit the same to be recorded. [C. L. 1876, ch. 96, p. 507, § 2.]

Notice of receipt of patent.

SEC. 1390. Within thirty days after the receipt by them or him of a patent for such lands, the corporate authorities or judge entering the same shall give public notice thereof by publishing such notice in a newspaper printed and published in the county in which such city or town shall be situated, or in case there shall not be any newspaper published in said county, then in some newspaper printed and published at the seat of government of this territory. Such notice shall be so published once in each week for at least ten successive weeks, and shall contain an accurate description of the lands so entered, as the same is stated in the patent. [C. L. 1876, ch. 96, p. 507, § 3.]

Statements of occupying claimants.

SEC. 1391. Each and every person, company of persons, association or corporation, claiming to be an occupant or occupants, or to have, possess, or be entitled to the right of occupancy, or possession of such lands, or any block, lot, share or parcel thereof, shall, within one year after the first publication of such notice, in person, or by his, her, their, or its, duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel in which he, she, they or it, claim to have an interest, and the specified, right, interest or estate therein, which he, she, they, or it, claim to be entitled to receive, and deliver the same to, or into the office of such corporate authorities or judge, and all persons failing to sign and deliver such statement within the time specified in this section, shall be forever debarred the right of claiming or recovering such lands, or any interest or estate therein, or any part, parcel or share thereof, in any court of law, or equity; *Provided*, That the provisions of this section shall not apply to the property of minors or insane persons. [L. L. 1876, ch. 96, p. 508, § 4.]

Settlement of adverse claims.

SEC. 1392. Should two or more persons claim, adversely, the title to any lot or lots, or parcel of land within the boundaries of such city or town, the corporate authorities or judge having entered the same, shall, immediately after the time for filing claims has expired, certify and transmit all proceedings and papers, had or being before them or him in the premises, to the district court of the county, in which said lot or lots, or parcel of land are situated. Upon the receipt of the papers properly certified, and upon payment of court fee and costs, the clerk of such district court shall enter the case upon the register of actions, the name of the claimant whose claim was first filed with, and by, such corporate authorities or judge, being entered upon such register as plaintiff, and the other claimant or claimants as defendant, and thereafter the cause shall proceed in all respects as in cases originally brought in said court. The clerk shall, upon the receipt by him of such papers and proceedings, serve upon each claimant, his agent or attorney, a written notice that the claim of such claimant is contested, which notice shall specify the particular lot, block or parcel so contested, and the name of the adverse claimant. Upon the final determination of such contest, the clerk of the district court, or supreme court, as the case may be, shall forthwith certify the decision to the corporate authorities, or judge, and, upon the receipt of such decision, duly certified, the corporate authorities, or judge, as in other cases, make out, execute and deliver to the party or parties, in whose favor the decision is made, a conveyance in fee simple for the lot or lots, or parcels of land awarded in such decision. [C. L. 1876, ch. 96, p. 508, § 5.]

Appeal to supreme court.

SEC. 1393. Any party in such action, deeming himself or herself aggrieved by the determination or judgment of the district court in such cases, may appeal therefrom to the supreme court, as in other cases. [C. L. 1876, ch. 96, p. 508, § 6.]

Patentee to make deeds.

SEC. 1394. After the issuance of the patent for such lands, it shall be the duty of the corporate authorities, or judge, to whom such patent shall issue, to make out, execute, and deliver to each person, company, association or corporation, who may be legally entitled to the same, a deed in fee simple for such part or parts, lot or lots of land, on payment of his, her, their, or its proper and due proportion of the purchase money for such land, together with his, her, their, or its proportion of such sum as may be necessary to pay for streets, alleys, squares and public grounds, not exceeding fifty cents for each lot, and also such further sums as shall be a reasonable compensation for pre-paying, executing and acknowledging such deed, and not exceeding the sum of five dollars for the first, and one dollar for each additional lot claimed by the same owner; also for pre-paying for the stamps required by the laws of congress and of this territory to be attached to such deed, and also for counsel fee and for moneys expended in the acquisition of the patent and the administration of the trust, including reasonable charges for time and services employed in such trust, not exceeding the sum of fifty cents for each lot, and the foregoing charges shall be full payment for all expenses attending the execution of the trust. [C. L. 1876, ch. 96, p. 509, § 7.]

Limitation upon acquirement of lots.

Sec. 1395. No person or corporation shall be allowed to occupy or claim at the minimum rate, more than one-quarter block of the lands included in any one patent, nor to purchase a greater area than one-quarter block, except under the provisions of the next section. [C. L. 1876, ch. 96, p. 510, §1.]

Sale of unclaimed lots.

Sec. 1396. If all the lots, blocks, shares or parcels of such land, are not legally conveyed to the proper owners before the expiration of one year after the same shall have been passed upon by the corporate authorities or judge, or in case of contest, within thirty days after such contest shall have been finally determined, the same shall be sold to the highest bidder, and the proceeds applied to the erection of public buildings for the benefit of such city or town, after paying their proportionate share of the purchase money and other expenses, including expenses incurred by publication and sale. Notice of the sale authorized by this section, shall be published as is provided for the notice required by section thirteen hundred and ninety; *Provided*, That the provisions of this section shall not apply to the sale of real estate belonging to minors or insane persons, except upon an order of court authorizing such sale, which order may be made by the court upon an *ex parte* application, under oath, of the trustee named in this chapter. [C. L. 1876, ch. 96, p. 509, § 8.]

Original trustee to continue to act.

Sec. 1397. Any corporate authorities or judge, becoming a trustee under said act of congress, who shall, prior to the final execution of their trust, as provided in this chapter, go out of office, shall be, and they are hereby, authorized and empowered to discharge and execute all trusts which they may have assumed, in all respects in the same manner, and subject to the same duties and requirements as if they had continued in office. [C. L. 1876, ch. 96, p. 509, § 9.]

When successor shall assume trust.

Sec. 1398. In case of death, removal from the territory, or other disability of the trustee to execute the trust created by said act of congress, it shall be lawful for the corporate authorities or judge of the district in which any such city or town is situated, who may succeed said trustee in office, to assume said trust, and they, or he, shall be authorized, and they are hereby empowered, to execute the same in all respects in the same manner, subject to all the duties and requirements as provided in this chapter; *Provided*, That if the vacancy be caused by the death, resignation, or removal of one or more of the board of trustees, the remaining members shall have the power to fill the vacancy, by the election of one of the then existing board of trustees, of such town, or city, to fill the vacancy or vacancies so created, who shall possess all the powers incident to the execution of the trust imposed and assumed by the trustees thereof, until the final execution of the trust, unless other vacancies should thereafter occur, in which event, such additional vacancies shall be filled in like manner. [C. L. 1876, ch. 96, p. 509, § 10.]

Trustees may act through attorney.

SEC. 1399. The trustees, or a majority of them, of any trust created by the provisions of this chapter, and of the act of congress recognizing the said trust, and authorizing its existence, in all cases where entries are made by the corporate authorities of any city, or town, or body corporate, may, by the execution of a power of attorney, to be recorded in the office of the register of deeds of the proper county, authorize any one member of the trustees to sign all conveyances of lots, or parcels of land included in the trust, in accordance with the provisions of this chapter; *Provided*, That the trustees so empowered shall not be allowed to execute any such conveyance until directed to do so, in writing, by the trustees, or a majority of them; *And, provided further*, That the majority of the trustees may at any time revoke the said power of attorney by making, acknowledging and recording a revocation in the office of the register of deeds of the proper county. [C. L. 1876, ch. 96, p. 510, § 3.]

CHAPTER 2.

PLATTING AND DEDICATING TOWN SITES.

SECTION.
1400. Town sites and additions to be platted.
1401. Requisites of plat.
1402. Recording of plat deemed a dedication of streets.
1403. Streets and alleys may be vacated.
1404. How plat vacated.
1405. Plat may be partially vacated,
1406. Effect of partial vacation on streets.
1407. How vacated lots conveyed and assessed.
SECTION.
1408. Plat to be marked "vacated."
1409. County clerk to make plats if owner refuse—Costs.
1410. Clerk to plat land when description uncertain.
1411. Conveyances presumed to warrant accurate description—Platting.
1412. Plats heretofore made not affected.
1413. Unlawful to sell lots not platted.

Town sites and additions to be platted.

SEC. 1400. Every original owner or proprietor of any tract or parcel of land, who has heretofore sub-divided, or shall hereafter sub-divide, the same into three or more parts, for the purpose of laying out any town or city, or any addition thereto, or any part thereof, or suburban lots, shall cause a plat of such sub-division, with references to known or permanent monuments to be made, which shall accurately describe all the sub-divisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions, and length and breadth thereof, and the breadth and courses of all the streets and alleys established therein. Descriptions of lots or parcels of land in such sub-divisions, according to the number and designation thereof, on said plat contained, in conveyances, or for the purposes of taxation, shall be deemed good and valid for all intents and purposes. The duty to file for record a plat, as provided herein, shall attach as a covenant or warranty, in all conveyances of any part or parcel of such sub-divisions by the original owners or proprietors, against any and all assessments, costs and damages, paid, lost or incurred by any grantee, or person claiming under him, in consequence of the omission on the part of said owner or proprietors to file such plat. [C. L. 1876, ch. 116, § 1.]

Requisites of plat.

SEC. 1401. Every such plat shall contain a statement, to the effect that "the above, or foregoing sub-division of (here insert a correct description of the land or parcel sub-divided) as appears on this plat, is with the free consent, and in accordance with the desire of the undersigned, owners and proprietors," which shall be signed by the owners and proprietors, and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds; and when thus executed and acknowledged, said plat shall be filed for record and recorded in the office of the clerk of the proper county. [C. L. 1876, ch. 116, § 2.]

Recording of plat deemed a dedication of streets.

SEC. 1402. The acknowledgment and recording of such plat, is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets, or other public use, or is thereon dedicated to charitable, religious or educational purposes. [C. L. 1876, ch. 116, § 3.]

Streets and alleys may be vacated.

SEC. 1403. Streets and alleys so platted and laid out, or which have been platted or laid out under any prior law of this territory regulating private plats, may be altered or vacated in the manner provided by law for the alteration or discontinuance of highways. [C. L. 1876, ch. 116, § 4.]

How plat vacated.

SEC. 1404. Any such plat may be vacated by the proprietors thereof at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged, or proved and recorded in the same office with the plat to be vacated, and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divert all public rights in the streets, alleys, commons and public grounds, laid out or described in such plat, and in case where any lots have been sold, the plat may be vacated as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid. [C. L. 1876, ch. 116, § 5.]

Plat may be partially vacated.

SEC. 1405. Any part of a plat may be vacated under the provisions, and subject to the conditions, of this chapter; *Provided*, Such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat; *And, provided further*, That nothing contained in this section shall authorizè the closing or obstructing of any public hiyhway laid out according to law. [C. L. 1876, ch. 116, § 6.]

Effect of partial vacation on streets.

SEC. 1406. When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated, may enclose the streets, alleys and public grounds adjoining said lots in equal proportions. [C. L. 1876, ch. 116, § 7.]

How vacated lots conveyed and assessed.

SEC. 1407. The owner of any lots in a plat so vacated, may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor; and when such plat is acknowledged by such owner, and is recorded in the clerk's office of the county, such lots may be conveyed and assessed by the numbers given them on such plat. [C. L. 1876, ch. 116, § 9.]

Plat to be marked "vacated."

SEC. 1408. The county clerk, in whose office the plats aforesaid are recorded, shall write in plain, legible letters, across that part of said plat so vacated, the word "vacated," and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded. [S. L. 1876, ch. 116, § 8.]

County clerk to make plat if owners refuse—Costs.

SEC. 1409. Whenever the original owner or proprietor of any sub-division of any land, as contemplated in section fourteen hundred, has sold or conveyed any part thereof, or invested the public with any rights therein, and has failed and neglected to execute and file for record a plat, as provided in said section, the county clerk shall notify some, or all, of such owners and proprietors by mail or otherwise, and demand the execution of said plat as provided; and if such owners or proprietors, whether so notified or not, fail and neglect to execute and file for record said plat for thirty days after the issuance of such notice, the county clerk shall cause to be made the plat of such sub-division, and any surveying necessary therefor. Said plat shall be signed and acknowledged by the county clerk, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record; and when so filed for record, shall have the same effect for all purposes, as if executed, acknowledged and recorded by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the county clerk, laid before the first session of the county commissioners, who shall allow the same, and order the same to be paid out of the county treasury, and who shall, at the same time, assess the same amount, *pro rata*, upon all the several sub-divisions of said tract, lot or parcel so sub-divided; and said assessment shall be collected with, and in like manner, as the general taxes, and shall go to the general county fund; or said county commissioners may direct suit to be brought in the name of the county before any court having jurisdiction, to recover of the said original owners or proprietors, or either of them, the said cost and expense of procuring and recording said plat. [C. L. 1876, ch. 116, § 10.]

Clerk to plat land when description uncertain.

SEC. 1410. Whenever any congressional sub-division of land of forty acres, or less, or any lot or sub-division is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof, cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, said county clerk shall require, and cause to be made and recorded, a plat of such tract or lot of land, with its several subdivisions, in accordance with the provisions of this chapter, and he shall proceed in such cases according to the provisions of the preceding section, and all the provisions of said section in relation to plats of towns, cities and so forth, shall govern as to the tracts and parcels of land in this section referred to. [S. L. 1876, ch. 116, § 11.]

Conveyances presumed to warrant accurate description—Platting.

SEC. 1411. Every conveyance of land in this territory shall be deemed to be a warranty that the description therein contained is sufficiently definite and accurate, to enable the county clerk to enter the same on the plat book required by law to be kept; and when there is presented, to be entered on the transfer book, any conveyance, in which the description is not, in the opinion of the county clerk, sufficiently definite and accurate, he shall note said fact on said deed, with that of the entry, for transfer, and shall notify the person presenting the same that the land therein not sufficiently described, must be platted within thirty days thereafter. Any person aggrieved by the opinion of the county clerk, may, within said thirty days, appeal therefrom to the county commissioners, by claiming said appeal in writing, and thereupon no further proceedings shall be taken by the county clerk, and at their next session, the county commissioners shall determine said question, and direct whether or not said plat shall be executed and filed, and within what time, and if the grantor in such conveyance shall neglect for thirty days thereafter to file for record a plat of said land, and of the appropriate congressional sub-division in which the same is found, duly executed and acknowledged as required by the county clerk, or, in case of appeal, as directed by the county commissioners, then the county clerk shall proceed, as is provided in section fourteen hundred and nine, and cause such plat to be made and recorded, and thereupon the same proceedings shall be had, and rights shall accrue, and remedies had, as are in said section provided. Such plat shall describe said tract of land, and any other sub-division of the smallest congressional sub-division of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, and number of acres, and such other memoranda as are usual and proper; and descriptions of such lots or sub-divisions according to the number and designation thereof on said plat, shall be deemed good and sufficient for all purposes of conveyancing and taxation. [C. L. 1876, ch. 116, § 12.]

Plats heretofore made not affected.

Sec. 1412. None of the provisions of this chapter shall be construed to require re-platting in any case, where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared valid, notwithstanding irregularities and omissions in the manner or form of acknowledgment or judge's certificate, but the provisions of this section shall not affect any action or proceeding now pending. [C. 1876, ch. 116, § 13.]

Unlawful to sell lots not platted.

Sec. 1413. Any person who shall dispose of, or offer for sale, or lease, any lots, in any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot, and part of lot sold, leased or disposed of, or offered for sale. [C. L. 1876, ch. 116, § 14.]

CHAPTER 3.

POSSESSORY RIGHTS ON PUBLIC LANDS.

SECTION.
1414. Possessory right to 160 acres protected.
1415. Possessory right may be transferred, etc.
1416. Action for infringement on possessory right.

SECTION.
1417. Extent of possessory rights.
1418. Paramount right conceded to United States.
1419. Mining, oil and soda claims not affected.

Possessory right to 160 acres protected.

Sec. 1414. Conceding to the United States of America the primary and paramount right to dispose of the soil of this territory according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared, as between all persons now residing, or who shall hereafter come to reside, in this territory, and as between them, or any of them, and others, having or claiming, or now or hereafter pretending to have or claim, any right to occupy, possess and enjoy any portion of the public domain situate within the boundaries of this territory, and as between each and every of them, and all other persons, except the government of the United States of America, the right, to the same extent as though the paramount title was in them or any of them, to occupy, possess and enjoy any tract or portion of the public domain, not exceeding one hundred and sixty acres, shall be respected in law and equity in all the courts and tribunals in this territory; *Provided*, That the claimant thereof shall be the owner of improvements thereon, occupied or possessed by him, and used in the course of his business. [S. L. 1884, ch. 66, § 1.]

Possessory right may be transferred, etc.

Sec. 1415. The owner and possessor of every such claim, when held by virtue of any improvements thereon and in the course of his business, shall have a transferable interest therein, which may be sold on execution or otherwise; and any sale of such improvements shall be held to be a sufficient consideration on which to sustain a promise; *Provided*, That hereafter all such sales shall be in writing, and shall be signed by the vendor thereof. [S. L. 1884, ch. 66, § 2.]

Action for infringement on possessory right.

Sec. 1416. Any person thus settled upon any of the lands of the United States, may maintain trespass *quare clausum fregit*, trespass, ejectment, forcible entry and detainer, unlawful detainer, or any proper action under the procedure of this territory for possession, when wrongfully deprived thereof, or for the recovery of damages when the same have been suffered to such possession, occupation or enjoyment; and in any such action, no plea or defense that the paramount title to such claim is in the United States shall be received or considered as a bar to the plaintiff's right of recovery. [S. L. 1884, ch. 66, § 3.]

Extent of possessory rights.

SEC. 1417. On the trial of any such cause, the possession or the possessory right of the plaintiff shall be considered as extending to the tract whereon his improvements have been made and erected, but no single claim shall exceed in any case an area of one hundred and sixty acres, and shall not be sub-divided into smaller tracts than quarter sections. [S. L. 1884, ch. 66, § 4.]

Paramount right conceded to United States.

SEC. 1418. Nothing herein contained shall be construed into denying, to any extent, the right of the United States to dispose of any of the public domain in this territory, or the right to dispossess any of such occupants at their pleasure, but shall only be construed as applying to all persons other than the United States and those claiming under the United States, and as between all persons to whom this chapter is made applicable, the fact the title to any lands claimed hath not passed from the United States shall not bar the plaintiff's recovery in any of the actions enumerated or included in this chapter. [S. L. 1884, ch. 66, § 5.]

Mining, oil and soda claims not affected.

SEC. 1419. This chapter is not intended and shall not be construed to affect or apply to any mining, oil or soda claims, but shall affect and be applicable to claims held and used for arable and pasturable agriculture only. [S. L. 1884, ch. 66, § 6.]

TITLE 23. LAWS.

CHAPTER 1.

PUBLICATION AND DISTRIBUTION OF.

SECTION.
1420. Arrangement of acts, etc., in session laws.
1421. To be divided into chapters.
1422. Table of contents—Index and side notes.
1423. Secretary to distribute laws.
1424. County clerk to make requisition for laws.

SECTION.
1425. Who entitled to laws.
1426. Officer to deliver laws to successor.
1427. Legislators entitled to laws.
1428. Disposition of laws by secretary.
1429. Officers entitled to compiled laws.

Arrangement of acts, etc., in session laws.

SEC. 1420. The secretary of the territory shall, in the preparation of the acts, resolutions and memorials passed at each session of the legislative assembly, arrange the acts in the order of their approval by the governor, followed by the resolutions and memorials, and cause the same to be published in that order in the session laws. [S. L. 1886, ch. 48, § 1.]

To be divided into chapters.

SEC. 1421. The secretary of the territory shall also number the acts of each session in the following manner: The first act appearing in the published volume thereof shall be numbered chapter one, and each of the other acts shall be separately numbered consecutively as a chapter, in the order in which it is published as aforesaid, and the resolutions and memorals which follow thereafter need not be numbered. [S. L. 1886, ch. 48, § 2.]

Table of contents—Index and side notes.

SEC. 1422. The secretary of the territory shall also prepare a suitable table of contents for each volume of session laws published, and shall also prepare analytical, comprehensive and complete index thereof, and shall also prepare side notes, so drawn as to point to the contents of the text thereof. [S. L. 1886, ch. 48, § 3.]

Secretary to distribute laws.

SEC. 1423. The secretary of the territory is authorized to distribute the laws of the territory, as hereinafter prescribed. [C. L. 1876, ch. 43, p. 289, § 1.]

County clerk to make requisition for laws.

SEC. 1424. The county clerk of each organized county shall make a requisition on the secretary of the territory for as many copies of the laws as said county may be entitled to, and he shall name the conveyance or means of transportation, and also specify to whom they shall be directed, and to whose care, and upon the receipt of such requisition, the secretary shall at once forward the required number of laws as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the secretary, which receipt shall be filed in the office of the secretary of the territory; *Provided*, That the county so obtaining laws be at the cost of the carriage of the same. [S. L. 1876, ch. 43, § 2.]

Who entitled to laws.

SEC. 1425. The county clerk shall distribute one copy of the laws to each officer of the county or precinct, and one copy to each notary public. [C. L. 1876, ch. 43, § 3.]

Officer to deliver laws to successor.

SEC. 1426. Each county officer shall deliver up to his successor in office, all statutes which shall have come into his possession under the provisions of this title as soon as his successor shall have qualified. [C. L. 1876, ch. 43, § 4.]

Legislators entitled to laws.

SEC. 1427. The members of each legislative assembly shall be furnished by the secretary, at the commencement of each session for which they were elected, with one copy each of the laws of the preceding sessions. [C. L. 1876, ch. 43, § 5.]

Disposition of laws by secretary.

SEC. 1428. It shall be the duty of the secretary, upon receiving the laws aforesaid, to notify the county clerk of each and every organized county, that said laws are ready for distribution, and that he can receive the number of copies to which his county is entitled, upon making a requisition for the same. The secretary of the territory is hereby also authorized and required annually, and from time to time, immediately after their publication in volumes, to deposit fifty copies of the laws of the territory in the territorial library for the use of the legislature. He shall also deposit with the territorial librarian forty copies of the laws heretofore published, and a like number of volumes hereafter published, immediately upon their receipt by him, to be exchanged by said librarian with the states and territories of the United States, and distribute to the following public officers, persons, corporations and societies one copy each, that is to say: The governor, members of the legislature, secretary of the council, clerk of the house, the delegate in congress, the secretary of the territory, each judge of the territory, attorney general, territorial auditor and treasurer, attorney general of the United States, the librarian of congress, and the President of the United States. [C. L. 1876, ch. 43, § 6.]

Officers entitled to compiled laws.

SEC. 1429. All county officers, and members of the legislature shall be supplied with copies of the compiled laws free of cost. [S. L. 1882, ch. 24, § 2.]

TITLE 24. LEGAL HOLIDAYS.

CHAPTER 1.

DESIGNATION OF.

SECTION 1430. Enumeration of legal holidays.

Enumeration of legal holidays.

SEC. 1430. The first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the day that may be appointed by the President of the United States as the annual thanksgiving day and the twenty-fifth day of December of each and every year are hereby declared legal holidays in and for the Territory of Wyoming. [S. L. 1886, ch. 67, § 1.]

TITLE 25. LEGISLATIVE ASSEMBLY.

CHAPTER 1.

TIME OF MEETING AND QUALIFICATIONS OF MEMBERS.

SECTION.	SECTION.
1431. Time of convening.	1432. Qualifications of members.

Time of convening.

SEC. 1431. The legislative assembly of the territory shall convene at the capitol of the territory in regular session on the second Tuesday in January of every second year after the year eighteen hundred and eighty-two. [S. L. 1879, ch. 52, § 1.]

Qualifications of members.

SEC. 1432. Members of the council and house of representatives shall respectively be actual residents of the districts for which they are chosen or elected at the time when chosen and elected, and when they take their seats, and during the session. [S. L. 1882, ch. 2, § 3.]

TITLE 26. LICENSES.

CHAPTER 1. COUNTY LICENSES.
CHAPTER 2. GAMING LICENSES.

CHAPTER 1.

COUNTY LICENSES.

SECTION.
1433. Sheriff to collect licenses.
1434. Licenses to be prepared by county clerk.
1435. Clerk to keep abstract of licenses.
1436. Treasurer to make report of license receipts.
1437. License money to go to general fund—Exceptions.
1438. Certain licenses in Laramie County payable to cities.
1439. Auctioneers, peddlers, etc., to pay license.
1440. Penalty for peddling, etc., without license.
1441. Penalty for selling goods, etc., without license.
1442. Liquor licenses and penalties.
1443. Place of sale to be named in liquor license.
1444. Liquor dealer to keep orderly house.

SECTION.
1445. Exhibition and theatre licenses.
1446. Pawnbroker and intelligence office licenses
1447. Disposition of fines.
1448. Officer failing to report fines—Penalty.
1449. Informers may testify.
1450. Penalties may be recovered by action.
1451. Sheriff to return unpaid licenses.
1452. Amount of auctioneer's and peddler's license.
1453. Amount of liquor license.
1454. Amount of exhibition license.
1455. Penalty for selling liquor without license.
1456. Drummers' license.
1457. Penalty for violating last section.
1458. Who deemed peddlers.

Sheriff to collect licenses.

SEC. 1433. It shall be the duty of the sheriff of each county to furnish all licenses and collect all moneys for the same as hereinafter provided, and if the sheriff of any county shall knowingly permit any person subject to such license to conduct or carry on any branch of business, occupation or pursuit without first obtaining such license, such sheriff shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law in the case of similar offenses. [S. L. 1876, ch. 76, p. 453, § 1.]

Licenses to be prepared by county clerk.

SEC. 1434. Licenses shall be prepared by the county clerk and shall be delivered to the sheriff of the county wherein they shall be issued, and each license shall contain the name of the person and the character and place of business to be conducted under such license, and it shall be the duty of the county clerk to affix his official signature and the seal of the county to such license, which license shall be countersigned by the county treasurer or his deputy before being issued by the sheriff, and all moneys collected under and for such license shall be paid by the sheriff into the county treasury within fifteen days from the date of said license. [C. L. 1876, ch. 76, p. 453, § 2.]

Clerk to keep abstract of licenses.

SEC. 1435. It shall be the duty of the county clerk to keep on file in his office, and submit for the inspection of the county commissioners at each of their regular sessions, a faithful and correct abstract containing full information of all licenses so issued to the sheriff, and neglect to comply with the provisions of this section shall be deemed a misdemeanor, and shall be punished as provided by law. [C. L. 1876, ch. 76, p. 453, § 3.]

Treasurer to make report of license receipts.

SEC. 1436. It shall be the duty of the county treasurer of each county to furnish to the county commissioners at each of their regular sessions a full and complete statement of all moneys received for licenses issued, as provided in the foregoing sections of this chapter; failure or neglect on the part of the treasurer to comply with the provisions of this section shall be deemed a misdemeanor, and shall be punished as provided by law. [C. L. 1876, ch. 76, p. 453, § 4.

License money to go to general fund—Exceptions.

SEC. 1437. All money collected for licenses, as provided for by this chapter, shall constitute a portion of, and be credited to, the general fund, except as is otherwise provided in the next succeeding section and in section four hundred and thirty-one. [C. L. 1876, ch. 76, p. 454, § 5. S. L. 1884, ch. 55, § 1. S. L. 1886, ch. 116, § 21]

Certain licenses in Laramie County payable to cities.

SEC. 1438. All licemses issued by Laramie County, for the sale of liquors, or for owning or keeping a billiard table, or any table used for pool or bagatelle, and all licenses issued by said county for any other game or games, not prohibited by the laws of this territory, when the licensee shall be a resident of, and carrying on the business for which he is licensed within the corporate limits of any incorporated town, city or village, within said County of Laramie, the license shall be collected by the city marshal or collecting officer of such incorporated town, city or village, in addition to the licenses issued by such incorporated town, city or village, for the purposes mentioned in this chapter. It shall be the duty of such collecting officer, between the first and fifteenth days of each month, to pay into the treasury of such incorporated town, city or village, all moneys collected for such licenses, which moneys shall be applied to the general revenue purposes of such incorporated town, city or village. [S. L. 1884, ch. 55, § 1.]

Auctioneers, peddlers, etc., to pay license.

SEC. 1439. No auctioneer, peddler, or other person or persons, company or corporation, shall be permitted to sell, vend, barter or retail, either at private sale or public auction, any goods, wares or merchandise, without first having obtained a license therefor, as hereinbefore provided. [C. L. 1876, ch. 76, §6.]

Penalty for peddling, etc., without license.

SEC. 1440. Any person found selling at auction, or peddling without a license, as provided for in the preceding section, shall be guilty of a misdemeanor; and the person so actually vending or peddling is liable, whether he be the owner of the goods or not, and, upon conviction thereof, shall forfeit and pay any sum not exceeding one hundred nor less than twenty dollars, into the county treasury where such conviction shall be had, or may be recovered by civil action in the name of the county prosecuting the same, which said sum may be collected as provided by law in criminal cases. [C. L. 1876, ch. 76, § 7.]

Penalty for selling goods, etc., without license.

SEC. 1441. If any person or persons, company or corporation shall, directly or indirectly, keep a store or sell, vend or retail any goods, wares, merchandise or products of any farm and dairy without being first duly authorized by license, as hereinbefore provided, the person or persons, company or corporations, so offending shall forfeit and pay any sum as provided in the preceding section; *Provided*, That this section shall not be construed to extend to the sale of goods, wares, merchandise or the products of the farm and dairy, by merchants who pay an annual tax upon merchandise, or the products of the farm and dairy, assessed according to the revenue laws of this territory; *Provided further*, That the provisions of this chapter shall not apply to the products of the farm and dairy by actual producers thereof. [S. L. 1886, ch. 12, § 1.]

Liquor licenses and penalties.

SEC. 1442. No person or persons in any county shall be permitted to vend, sell, barter or dispose of, for pecuniary benefit or advantage, either directly or indirectly, in person or by agent or employe, any spirituous, malt or fermented liquors or wines, in less quantities than five gallons, without first obtaining a license, or permit therefor, as provided for in this chapter, and any person or persons found dealing in liquors, as aforesaid, without having first obtained a license therefor, shall forfeit and pay the sum of one hundred and fifty dollars for each and every offense, together with costs of suit. One-half of said fine shall be patd by the court receiving such fine, to the person giving the information, the remaining half to be paid into the county treasury, and shall be credited to the general county fund; *Provided*, That all persons engaged in selling liquors by the barrel, case, or in the original package, and not in quantities of less than five gallons shall pay an annual county license therefor of one hundred and seventy-five dollars; *Provided further*, That nothing in this section or chapter shall be construed to apply to the sale of ale and beer which is manufactured in this territory and which is sold at such place of manufacture in quantities of one keg and upwards. [C. L. 1876, ch. 76, § 9. S. L. 1877, p. 75, § 1. S. L. 1882, ch. 65, § 1.]

Place of sale to be named in liquor license.

SEC. 1443. License granted for retailing liquors, as provided in this chapter, shall not authorize the persons obtaining the license to vend, sell, barter or dispose of such liquors, in more than one place or house, and such place and house shall be fully described in such license; *Provided*, That the licensee shall be entitled to retail liquors in two or more places by paying a license for each place where such business is conducted. [C. L. 1876, ch. 76, § 10.]

Liquor dealer to keep orderly house.

SEC. 1444. Whenever any person or persons, having a retail liquor license, shall suffer or permit any disorder, disturbance of the public peace, drunkenness, or unlawful games or practices, or violations of any law whatsoever, in his, her or their house or place for which such license shall be granted, such person or persons shall forfeit said license, and such license shall not be renewed for three months thereafter. [C. L. 1876, ch. 76, § 11.]

Exhibition and theatre licenses.

SEC. 1445. No person or persons, company or corporation, shall be permitted to open any theatre, circus, menagerie or caravan, or to give any exhibition or entertainment of serenaders, minstrels, or opera or concert singers, or show of figures, or wire or rope performances, or sleight of hand performances, or other exhibitions or performances not herein enumerated, for hire, or where an entrance fee is charged or collected, without first obtaining a license therefor, as provided in this chapter; *Provided*, No license shall be required for any concert, fair, festival or other entertainment opened, held or given exclusively for the benefit of any church built, or to be built, within this territory, nor for any exhibition or performance of a literary character; *Provided, however*, That the provisions of this section shall not apply to any fair, or exposition, held under the direction or management of the officers of any agricultural or industrial society, duly organized, on any enclosed grounds, owned, controlled or occupied by such society for that purpose, nor to any horse race, or trot, upon such grounds, or within any park, fair ground or inclosure within this territory. [C. L. 1876, ch. 76, § 12.]

Pawnbroker and intelligence office licenses.

SEC. 1446. Each pawnbroker shall be required to pay a license of twenty-five dollars per quarter year, and each keeper of an intelligence office shall be required to pay a license of fifteen dollars per quarter year, the license money provided for in this section to be collected as provided for other licenses in this chapter. [S. L. 1882, ch. 64, § 1.]

Disposition of fines.

SEC. 1447. Every magistrate or other officer, to whom any fines imposed by this chapter shall be paid for the use of the county, shall, at each regular meeting of the board of county commissioners, make a report of the total amount so collected, and all fines so collected shall be paid into the county treasury for the credit of the general county fund, within thirty days after collection thereof. [C. L. 1876, ch. 76, § 15.]

Officer failing to report fines—Penalty.

SEC. 1448. Any magistrate or other officer neglecting, omitting or refusing to comply with the provisions of the preceding section shall be guilty of a misdemeanor, and shall be punished as provided by law. [C. L. 1876, ch. 76, § 16.]

Informers may testify.

SEC. 1449. Persons prosecuting or giving information under the provisions of this chapter may be competent witnesses on the trial thereof, notwithstanding their interest in the penalty to be recovered. [S. L. 1876, ch. 76, § 17.]

Penalties may be recovered by action.

SEC. 1450. Penalties incurred by a violation of the provisions of this chapter may be recovered by civil action in the name of the county prosecuting the same, or by indictment or complaint in the name of the people of the Territory of Wyoming. [C. L. 1876, ch. 76, § 18.]

Sheriff to return unpaid licenses.

SEC. 1451. If any sheriff fail, from causes not within his control, to collect the amount payable on any license issued as provided in section fourteen hundred and thirty-three, after such license has been issued, such license shall be returned to the county treasurer within twenty days after the issuance thereof, and it shall be the duty of said county treasurer to note the fact of such failure to collect, and to return the license to the office of the county clerk at the next regular session of the board of county commissioners; said license shall be cancelled or destroyed by said board of county commissioners. [C. L. 1876, ch. 76, § 19.]

Amount of auctioneer's and peddler's license.

SEC. 1452. Auctioneers permanently located shall pay a license of five dollars per month, all persons mentioned in sections fourteen hundred and thirty-nine and fourteen hundred and forty shall pay a county license of twenty-five dollars per month. No license shall be issued for less than one month. [S. L. 1882, ch. 66, § 1.]

Amount of liquor license.

SEC. 1453. Any person or persons selling liquors as provided in section fourteen hundred and forty-two shall pay an annual license as follows: In all cases where such license permits the selling at or within five miles of any railway station, or in or within five miles of a town, city or village located on any railroad, or at any other place within five miles of a railroad, there shall be paid therefor the sum of three hundred dollars, payable annually in advance, and it shall be unlawful under any circumstances to issue any license for selling liquors either at wholesale or retail for a less period than one year, or to refund any portion of the amount paid for any license; *Provided*, That all persons or parties engaged in selling such liquors by retail, in any case not provided for by this section, shall pay an annual license of one hundred dollars per annum, payable annually in advance. [S. L. 1884, ch. 59, § 1.]

Amount of exhibition license.

SEC. 1454. Any person or persons, company or corporation, opening any exhibition as provided in section fourteen hundred and forty-five, shall be required to pay a license of not more than fifty, nor less than ten dollars for each day of such exhibition, except traveling circuses, which shall be required to pay a license of fifty dollars previous to the opening of such exhibition; *Provided*, That any resident property owner or tax-payer of this territory, owning or occupying any building in which any of the performances enumerated in section fourteen hundred and forty-five may be given, shall only be required to pay a quarter yearly license of twenty-five dollars for all performances which may be given in any such building; *Provided further*, That the board of county commissioners of Uinta County may reduce the license for any exhibition one-half, if said board of county commissioners so determine, on any exhibition within Uinta County. [C. L. 1876, ch. 76, § 22. S. L. 1877, p. 76, § 1. S. L. 1879, ch. 53, § 1.]

Penalty of selling liquor without license.

SEC. 1455. Any person or parties who shall sell, barter, dispose of or give away any liquors, either spirituous, vinous, fermented or malt, without having first obtained a license therefor as required by law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment. [S. L. 1882, ch. 65, § 3.]

Drummers' license.

SEC. 1456. No person or persons, company or corporation, being non-resident, shall, in person or by employe, traveling or local agent, drummer or salesman, sell by sample or otherwise, in any county of this territory, any goods, wares or merchandise, either foreign or domestic, without first having obtained a license therefor in the same manner provided for regular wholesale and retail traders by this chapter; *Provided*, This section shall not apply to traveling agents, who sell exclusively by sample or otherwise, to regular merchants doing business in this territory; *Provided, further*, That no license shall be granted to any non-resident trader for a less period than six months. [C. L. 1876, ch. 76, p. 457, §§ 1 and 2.]

Penalty for violating last section.

SEC. 1457. Any person or persons, employe, traveling or local agent, drummer or salesman, who, in violation of the preceding section, shall vend, barter, sell or dispose of any goods, wares, merchandise or other personal property, shall be deemed guilty of a misdemeanor, and shall forfeit and pay into the county treasury of the county where the violation occurs, the sum of one hundred dollars for each and every offense, to be collected by civil action or by complaint or indictment. [C. L. 1876, ch. 76, p. 457, § 2.]

Who deemed peddlers.

SEC. 1458. All canvassers for prints, chromos, engravings, sewing machines and books, except law books, and all canvassers for the enlarging or remodeling of photographs, shall be deemed to be peddlers and shall be subject to the same licenses and other restrictions as are now provided by law for peddlers; *Provided*, That no person who has paid or is liable for the payment of an annual tax within the Territory of Wyoming, upon the property which he proposes to sell or dispose of, shall be required to take out a license under this chapter. [S. L. 1886, ch. 78, § 1.]

CHAPTER 2.

GAMING LICENSES.

SECTION.
1459. Penalty for gaming without license.
1460. How license obtained.
1461. Billiard table licenses.
1462. Requisites and effect of license.
1463. Amount of license— Disposition of money.
1464. Penalty for permitting gaming without license.

SECTION.
1465. Restrictions on towns and cities.
1466. Criminating evidence.
1467. What games may be licensed.
1468. Penalty for unfair playing.

Penalty for gaming without a license.

SEC. 1459. Each and every person who shall deal, play, carry on, open or cause to be opened, or who shall conduct, either as owner or employe, whether for hire or not, except under a license as hereinafter provided, any game of faro, monte, roulette, lansquenette, rondo, vingtun, commonly known as twenty-one, keno, props or any banking game played with cards, dice or any other device, whether the same be played for money, checks, credits or any other representatives of value, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than three hundred nor more than one thousand dollars, or by imprisonment not less than three months nor more than one year, or by both such fine and imprisonment. [C. L. 1876, ch. 58, p. 359, § 1.]

How license obtained.

SEC. 1460. Any person may procure a license for carrying on any one of the games mentioned in the preceding section, except as hereinafter provided, in any one room or apartment, upon payment to the sheriff of the county in which the same is situated, the amount of license money fixed in this chapter and upon giving to said sheriff a definite description of the room in which he designs to carry on said game, and filing with the register of deeds of said county a copy of said description. [C. L. 1876, ch. 58, p. 359, § 2.]

Billiard table licenses.

SEC. 1461. Any person or persons, owning or keeping a billiard table, or any table used for pool, bagatelle or any game not prohibited by the laws of this territory, and not otherwise specially provided for, when such table is not exclusively for private use of the owner or his family shall be required to pay a license of five dollars per quarter year on each such table so owned or kept, for each nine or ten pin or bowling alley, the owner, lessee, or manager thereof, shall be required to pay a license of ten dollars per quarter year, the license money provided for in this section to be collected as provided for other licenses in this chapter. [S. L. 1882, ch. 64, § 1.]

Requisites and effect of license.

SEC. 1462. Blank licenses shall be prepared by the register of deeds, which shall be signed, issued and accounted for, as is by law provided in respect to other county licenses. Each license delivered by the sheriff under this chapter to any person, shall contain the name of the licensee, a description of the room in which the licensee desires to carry on the game licensed, and shall by its term authorize the licensee to carry on one of the games mentioned in section fourteen hundred and fifty-nine, specifying it by name, in the room described therein for the period of three months next succeeding the date of issuance of the license. The said license shall protect the licensee and his employee or employees against any criminal prosecution for dealing or carrying on the game mentioned in the room described during said three months, but not for dealing or carrying on any other game than that specified, or the specified game in any other place than the room so described; *Provided*, That the licensee shall be entitled to deal, or play, or carry on two or more games in the same room by paying a license for each game so dealt or carried on. [C. L. 1876, ch. 58, p. 359, § 3.]

Amount of license—Disposition of money.

SEC. 1463. The amount to be paid to the sheriff for such quarterly license shall be one hundred and fifty dollars, and all moneys received for licenses under this chapter, shall be paid into the county treasury, and applied to the general county fund, except as otherwise provided in sections four hundred and thirty-one and fourteen hundred and thirty-eight. [C. L. 1876, ch. 58, p. 360, § 4. S. L. 1884, ch. 55, § 1. S. L. 1886, ch. 116, § 21.]

Penalty for permitting gaming without license.

SEC. 1464. Every person who shall permit any of the games mentioned in section fourteen hundred and fifty-nine to be played, conducted, dealt or carried on in any house, tent, booth, or shed, owned or occupied by him or her, in whole or in part, except by a person who has received a license as herein provided, or his employe, and in the room described therein, shall be guilty of a misdemeanor, and on conviction thereof shall be punished as provided in section fourteen hundred and fifty-nine, and in any prosecution for a violation of this section it shall only be necessary to prove the accused to be the owner or occupant of the building, and that the game has been carried on. [C. L. 1876, ch. 58, p. 360, § 5.]

Restrictions on towns and cities.

SEC. 1465. No town, city or municipal corporation in this territory, shall hereafter have power to prohibit, suppress or regulate any gaming house or game, licensed as provided in this chapter. [C. L. 1876, ch. 58, p. 360, § 6.]

Criminating evidence.

SEC. 1466. No person otherwise competent as a witness, shall be disqualified or excused from testifying as such, either before any jury or court, to any facts concerning offenses mentioned in the foregoing sections of this chapter on the ground that his testimony may criminate himself, and such testimony, if given, shall not be used as evidence against such witness. [C. L. 1876, ch. 58, § 7.]

What games may be licensed.

SEC. 1467. The following games, except as otherwise provided in section fourteen hundred and sixty-one, and no others, shall be licensed under, or by virtue of, the provisions of this chapter, viz.: Faro, monte, keno, rondo, lansquenette, roulette, vingtun, commonly known as twenty-one, and props, and any person or persons, who shall keep or deal, or permit to be kept or dealt, in any building or place under his or their control, any other banking or other games of chance for money, or other representation of value played with cards, or other devices, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section fourteen hundred and fifty-nine; *Provided*, That the word "monte" in this chapter shall not be construed to mean "three-card monte." [C. L. 1876, ch. 58, § 8.]

Penalty for unfair playing.

SEC. 1468. It shall be unlawful for any person or persons, to deal or play, any game mentioned in this chapter unfairly, or with the intention of cheating, or swindling, or in anywise winning in any way more than the fair percentage of the game; and any person or persons, or party, who shall so play, or deal, with the intention of cheating, or swindling, shall, on conviction thereof, be guilty of a misdemeanor, shall be fined in any sum not less than three hundred dollars, and not more than one thousand dollars, or imprisoned not less than thirty days, and not more than one year. [C. L. 1876, ch. 58, § 9.]

TITLE 27. LIENS.

CHAPTER 1. LIENS ON PERSONAL PROPERTY.
CHAPTER 2. MINERS' LIENS.
CHAPTER 3. MECHANICS' AND BUILDERS' LIENS.
CHAPTER 4. MECHANICS' AND BUILDERS' LIENS FOR LARAMIE COUNTY.

CHAPTER 1.

LIENS ON PERSONAL PROPERTY.

SECTION.
1469. Who entitled to lien.
1470. Agistors and stable keepers.
1471. Common carriers and warehousemen.
1472. Appointment of appraisers.
1473. Oath and duty of appraisers.
1474. Notice of sale—Sale and application of proceeds.
1475. Requisites of sale.
1476. Lien holder may purchase.
1477. Adjournments—Bill of sale.
SECTION.
1478. Right of action preserved.
1479. Clerk and crier of sale.
1480. Fees of appraisers, etc.
1481. Hotel keepers' lien.
1482. Chattel mortgages subject to liens.
1483. Timber liens to be paid *pro rata*.
1484. Identification of property not required in timber liens.
1485. When lien not to affect *bona fide* purchasers.

Who entitled to lien.

SEC. 1469. Any mechanic, artisan, or other person who shall make, alter, repair or bestow labor upon any article of personal property, at the request of the owner or party having possession thereof, or who shall furnish materials from which the same is made or repaired, shall have a lien upon all such articles of personal property, for his reasonable charges for the labor performed, or materials furnished and used in such making, alteration, repair, or improvement. [C. L. 1876, ch. 77, p. 458, § 1.]

Agistors and stable keepers.

SEC. 1470. Any ranchman, farmer, agistor or herder of cattle, tavern keeper, or livery stable keeper, to whom any horses, mules, asses, cattle, or sheep, shall be entrusted, for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon said horses, mules, asses, cattle or sheep, for the amount that may be due, for such feeding, herding, pasturing, or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle, or sheep, until the said amount is paid; *Provided*, That the provisions of this section shall not be construed to apply to stolen stock. [C. L. 1876, ch. 77, p. 462, § 1.]

When lien forfeited see § 1055.

Common carriers and warehousemen.

SEC. 1471. Every common carrier of goods or passengers who shall, at the request of the owner of any personal goods, carry, convey, or transport the same from one place to another, and any warehouseman or other person who shall safely keep or store any personal property at the request of the owner or person lawfully in possession thereof, shall, in like manner, have a lien upon all such personal property, for his reasonable charges for the transportation, storage, or keeping thereof, and for all reasonable and proper advances made thereon by him in accordance with the usage and custom of common carriers and warehousemen. [C. L. 1876, ch. 77, p. 462, § 2.]

Appointment of appraisers.

SEC. 1472. If any such charges for which a lien is given by the preceding sections, be not filed within thirty days after the same becomes due and payable, the mechanic or other person to whom such lien is given, may apply to any justice of the peace of the county wherein he resides, to appoint appraisers to appraise the several articles of personal property, when such lien is claimed. Such justice shall thereupon appoint by warrant, under his hand and seal, the appraisers being responsible householders, of the county, not interested in the matter to appraise such personal property. [C. L. 1876, ch. 77, p. 458, § 2.]

Oath and duty of appraisers.

SEC. 1473. The appraisers so appointed, shall be sworn by the justice, to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return appraisement, wherein shall be set down each article separately, to the justice, by whom they were appointed, within ten days after their appointment. [C. L. 1876, ch. 77, p. 458, § 3.]

Notice of sale—Sale and application of proceeds,

SEC. 1474. After such appraisement is made, the person to whom such lien is given by the foregoing sections, shall give ten days prior notice of the time, place, and terms of sale, together with a description of the property to be sold. Such notice shall be personally served upon the owner, or the person from whose possession such property was received, if such owner or person reside within the county; if not, by publication in some newspaper published in the county wherein the person attempting to enforce his lien resides, (or if there be no such newspaper, then by posting in three public places within such county for at least four weeks), and shall transmit by mail to the owner, at his usual place of abode, if known, a copy of such notice, the notice being personally served, or the service being complete after four weeks, the party claiming a lien, may proceed to sell all such personal property, or as much thereof as may be necessary to pay his claim, at public auction, for cash in hand, at any public place within such county, named in such notice, between the hours of ten a. m. and four p. m. of the day appointed; and from the proceeds may pay the reasonable costs of such appraisement, notice, and sale, and his reasonable charges for which he hath his lien. The residue of the property unsold, he shall surrender unto the owner. [C. L. 1876, ch. 77, p. 458, § 4.]

Requisites of sale.

SEC. 1475. No such sale shall be made for less than two-thirds of the appraised value of the article sold, nor except upon due notice, as required by the preceding section. Every such sale made in violation of the provisions of this section, shall be absolutely void. [C. L. 1876, ch. 77, p. 459, § 5.]

Lien holder may purchase.

SEC. 1476. At any such sale, the person to whom such lien is given, may become the purchaser. [C. L. 1876, ch. 77, p. 459, § 6.]

Adjournments—Bill of sale.

SEC. 1477. In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day, by public outcry, at the place of sale. Upon the completion of such sales, the person to whom the lien is given hereby, shall cause a bill of sale thereof to be filed with the justice of the peace before whom the appraisement was had, in which shall be set down the sum for which each separate article of property was sold, and the name of the purchaser. The justice shall record such bill of sale in his docket, and preserve the original thereof, together with the appraisement. [C. L. 1876, ch. 77, p. 459, § 7.]

Right of action preserved.

SEC. 1478. Nothing herein contained shall be so construed as to take away the right of action of the party to whom such lien is given for his charges, or for any residue thereof after sale of such property. [C. L. 1876, ch. 77, p. 459, § 8.]

Clerk and crier of sale.

SEC. 1479. At any such sale, the person to whom such lien is given as herein provided, may appoint a clerk and crier. [C. L. 1876, ch. 77, p. 459, § 9.]

Fees of appraisers, etc.

SEC. 1480. Appraisers appointed under the provisions of this chapter shall receive three dollars per day; justices of the peace shall receive for each warrant of appraisement twenty cents per one hundred words, and the like fees for recording each bill of sale. Clerks and criers at sales made under the provisions hereof, shall receive each three dollars per day. [C. L. 1876, ch. 77, p. 459, § 10.]

Hotel keepers' lien.

SEC. 1481. Any keeper of a hotel or boarding house or lodging house shall have a lien upon the baggage or other personal property of any person who shall obtain board, or lodging, or both, from such keeper, for the amount due for such board or lodging, and is hereby authorized to retain the possession of such baggage or personal property until the said amount is paid. [S. L. 1882, ch. 50, § 1.]

Chattel mortgages subject to liens.

SEC. 1482. No mortgage on personal property shall be valid as against the rights and interest of any person entitled to a lien under the provisions of this law. [C. L. 1876, ch. 97, p. 464, § 13.]

Timber liens to be paid pro rata.

SEC. 1483. All lien claims for labor performed in cutting or manufacturing railroad cross ties, wood, poles or lumber, or for doing any labor in reference thereto, shall be concurrent liens upon the same, and shall be paid, *pro rata*, out of the proceeds arising from the sale thereof, if the same shall be sold. [C. L. 1876, ch. 77, p. 464, § 14.]

Identification of property not required in timber liens.

SEC. 1484. Persons entitled to a lien for labor performed in cutting or manufacturing any railroad cross ties, wood, poles or lumber, shall not be required to identify any particular tie or ties, or sticks, poles or boards, but may maintain their lien against any or all of that class of property owned and held by the person or persons from whom their pay for such labor is due, and may seize and sell the same as provided in this chapter. [C. L. 1876, ch. 77, p. 464, § 15.]

When lien not to affect bona fide purchasers.

SEC. 1485. No lien upon personal property shall be valid as against an innocent and *bona fide* purchaser, unless the person having the right of such lien shall notify said purchaser before he makes payment for such property, of the existence of such lien, in which case, the purchaser shall be responsible to the person having such lien claim against said property, for the full amount of his claim, and all legitimate costs and expenses, and payment made on such lien claim shall apply on payment for such personal property. [C. L. 1876, ch. 77, p. 464, § 16.]

CHAPTER 2.

MINERS' LIENS.

SECTION.
1486. Lien of laborer.
1487. Lien for materials.
1488. Enforcement of liens.
1489. Notice of lien.
1490. Application of last section.
1491. Against whom lien holds.
1492. Time of bringing action.
1493. Lien on oil lands.
1494. Claim of sub-contractor or laborer.
1495. Liability of owner after notice.
1496. Enforcement of claim by action.
SECTION.
1497. Procedure in obtaining lien.
1498. Action to enforce lien.
1499. Fees for recording.
1500. Entry of satisfaction.
1501. Penalty for failing to satisfy.
1502. Application of this chapter.
1503. Where actions to be brought.
1504. Notice to non-resident by publication.
1505. Service may be had in any county.
1506. Application of chapter to oil wells.

Lien of labor.

SEC. 1486. Every miner or other person, who, at the request of the owner of any ledge or lode of quartz-bearing gold, silver, cinnabar or copper, or of any coal bank or mine, shall work in or upon such mine or bank, shall have a lein upon such vein or lode, mine or bank, to the amount due at any time when a demand shall be made upon such owner, or his or their agent for money due for such labor, and payment shall be refused. [C. L. 1876, ch. 77, p. 464, § 1.]

Lien for materials.

SEC. 1487. Any person who shall, labor as a mechanic, or otherwise, or who shall furnish timber, lumber, rope, nails, or any other material for timbering shafts or levels for the mine, or who shall furnish any kind of materials for erecting windlass, whim, or other hoisting apparatus upon any vein, mine or coal bank, referred to in the preceding section, shall also have a lien upon the mine or coal bank for which he furnished such materials, or upon which he performed such labor. [C. L. 1876, ch. 77, p. 464, § 2.]

Enforcement of lien.

SEC. 1488. The party seeking a lien shall proceed, so far as the proceedings are applicable, in the same manner, to enforce a lien as by law required in the case of mechanics and other persons seeking to enforce a lien upon dwelling houses and other buildings, except when other provisions are made by this chapter. [C. L, 1876, ch. 77, p. 465, § 3.]

Notice of lien.

SEC. 1489. When any sum, exceeding ten dollars, for labor performed by any miner, or other person, upon, or in, any mine or coal bank specified in this chapter, shall be due and unpaid for ten days, it shall be competent for the person or persons to whom such sum of money shall be due, to file a notice in the office of the county clerk in the county where such mine is situated, at any time within thirty days after the last day upon which work was done by him; which said notice shall in substance set forth the fact that the party performed labor (naming the kind), for a party or company (naming the party or company) that such labor was performed under a contract (stating the substance); also, the time when the party commenced and when he ceased to work, the amount still due and unpaid, together with a description of the mine or coal bank upon which such work was performed, which statement shall be verified by the affidavit of the party so filing it, and when filed, the county clerk shall record the same in a "lien book," the same as required in the case of mechanics' notices of liens. [C. L. 1876, ch. 77, p. 465. § 4.]

Application of last section.

SEC. 1490. The provisions of the next preceding section shall apply to persons who shall furnish materials or work upon any shaft, whim or other hoisting works, who, by complying with the general provisions of such section, shall have a like lien. [C. L. 1876, ch. 77, p. 465, § 5.]

Against whom liens holds.

SEC. 1491. When notices, as provided in the next two preceding sections, shall be filed, the lien shall hold, not only against the owner of the mine or bank from the time when the miner or other person began work, but against all persons or company who shall have purchased such mine or coal bank while such miner or other person was employed therein, or furnished materials used therein or thereon. [C. L. 1876, ch. 77, p. 465, § 6.]

Time of bringing action.

SEC. 1492. Suit to enforce such lien may be commenced at any time within one year after filing such notice. [C. L. 1876, ch. 77, p. 465, § 7.]

Lien on oil lands.

SEC. 1493. Any owner of any oil well or spring, who shall employ any person to perform any work of any kind around, or about, any oil well or spring, either in building derricks, buildings, or any kind of machinery, or in boring or drilling, shall be deemed within the provisions of this chapter; and all persons performing labor or furnishing materials, shall have like liens upon oil territory upon which he labored or for which he furnished materials or the improvements thereon, as miners or other laborers upon, or in, mines as provided in this chapter and shall proceed in the same manner to enforce a lien. [C. L. 1876, ch. 77, p. 465, § 8.]

Claim of sub-contractor or laborer.

SEC. 1494. Every miner or other person doing or performing any work or furnishing any material, as specified in this chapter, under a contract or agreement, express or implied, between the owner or owners thereof, or his or their agent, whether such work shall be performed or material furnished as miner, laborer, sub-contractor or otherwise, whose demand for work so done or material so furnished has not been paid, may deliver to the owner or owners of such mine or his or their agent an attested account of the amount and value of the work and labor thus performed or the material thus furnished and remaining unpaid, and thereupon such owner or owners, or his or their agent, shall retain out of his subsequent payments to the contractors the amount of such work and labor or material furnished for the benefit of the person so performing or furnishing the same. [C. L. 1876, ch. 77, p. 466, § 2.]

Liability of owner after notice.

SEC. 1495. Whenever any account of labor performed or material furnished, as referred to in the preceding section, shall be placed in the hands of the owner or owners of any mine or his or their agent, as above stated, it shall be the duty of such owner or owners or his or their agent to furnish his or their contractor with a copy of such papers, so that if there be any disagreement between such contractor and his creditor they may by amicable adjustment or by arbitration ascertain the true sum due, and if the contractor shall not, within ten days after the receipt of such papers, give the owner or owners or his or their agent written notice that he intends to dispute the claim, or if for ten days after giving notice he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting to the demand, and the owner or owners or his or their agent shall be justified in paying the same when it becomes due. [C. L. 1876, ch. 77, p. 466, § 3.]

Enforcement of claim by action.

SEC. 1496. The amount which may be due from any contractor to his creditor may be recovered from said owner or owners or his or their agent by the creditor of said contractor, in an action at law to the extent in value of any balance due by the owner or owners or his or their agent, to his or their contractor, under the contract with him at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same. [C. L. 1876, ch. 77, p. 466, § 4.]

Procedure in obtaining lien.

SEC. 1497. Any person entitled to a lien under this chapter shall make an account in writing of the items of labor, skill, machinery and material furnished, or either of them, as the case may be; and after making oath thereto, shall, within sixty days from the time of completing such labor and skill, or furnishing the last item of such machinery or material, file the same in the office of the register of deeds of the county in which the ledge, lead or lode, or bank may be situated, for which such labor, skill, machinery or material shall have been furnished, and shall also file at the same time a correct description of the property to be charged with said lien, which account and description of said property, so made and filed, shall be recorded in a separate book to be provided for that purpose, and shall, for the time of the completion of the work, or furnishing material, and for one year thereafter, operate as a lien on the several descriptions of ledges, leads, lodes, mines or banks named in section fourteen hundred and eighty-six; when any labor has been done, or labor furnished, on a written contract, the same, or a copy thereof, shall be filed with the account herein required to be filed; *Provided*, That all lien claims for labor performed or material furnished shall be concurrent liens upon the same, and shall be paid *pro rata* out of the proceeds arising from the sale thereof, if the same shall be sold. [C. L. 1876, ch. 77, p. 466, § 5.]

Action to enforce lien.

SEC. 1498. Every person holding such lien may proceed to obtain a judgment for the amount of his account thereon, by civil action, and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied, and in all actions instituted under this chapter, all persons claiming liens upon the property sought to be affected, shall be made parties to such action or proceeding; and the rights of all parties to such action shall be determined by the court and such order made therein as shall preserve and protect the rights of all such parties under the provisions of this chapter. [C. L. 1876, ch. 77, p. 467, § 6.]

Fees for recording.

SEC. 1499. The county register of deeds, for filing and recording all papers under this chapter shall be paid the same fees as are, or hereafter may be allowed by law for filing and recording deeds. [C. L. 1876, ch. 77, p. 467, § 7.]

Entry of satisfaction.

SEC. 1500. When any person who shall have filed his account and perfected his lien, pursuant to the provisions of this chapter, shall have received satisfaction for his claim and the legal costs of his proceedings therein, he shall, upon the request of any person interested, and within six days, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same. [C. L. 1876, ch. 77, p. 467, § 8.]

Penalty for failing to satisfy.

SEC. 1501. If any person, having received satisfaction as specified in the preceding section, or having been tendered the amount due on his claim with legal costs, shall not, within six days after request, enter satisfaction as aforesaid, he shall forfeit and pay to the person aggrieved, double the amount of damages which may have been sustained in consequence of such refusal or neglect. [C. L. 1876, ch. 77, p. 467, § 9.]

Application of this chapter.

SEC. 1502. The provisions of this chapter shall apply to iron mines, so far as the same may be applicable, and to all mines not herein specified, within this territory. [C. L. 1876, ch. 77, p. 467, § 16.]

Where actions to be brought.

SEC. 1503. The suits or actions provided for by this chapter shall be brought in the county in which the lien provided for by this chapter is filed or recorded. [S. L. 1879, ch. 55, § 1.]

Notice to non-residents by publication.

SEC. 1504. When the owner or owners of the mine upon which the lien is filed, being a person or persons, shall reside out of the territory, or being a corporation shall have its place of business outside the territory and it shall be impossible to make service of process within the territory, service may be made by publication in the manner now provided by law. [S. L. 1879, ch. 55, § 2.]

Service may be had in any county.

SEC. 1505. When the owner or owners of the mine upon which the lien is filed, shall reside in the territory but in a county other than that in which the suit or action is brought, or being a corporation, shall have its place of business in the territory but in a county other than that in which the suit or action is brought, and it shall be impossible to make service of process within the county in which the suit or action is brought, it shall be the duty of the clerk of the court in which the suit or action is brought, upon an affidavit being filed in his office showing such facts, to transmit the summons or other process to the sheriff of the county in which the defendant resides or has its place of business, and the summons or other process shall be served by such sheriff and returned as in other cases, except that the time for making such service and return and the time of answering in such action may be extended one week. [S. L. 1879, ch. 55, § 3.]

Application of chapter to oil wells.

SEC. 1506. The provisions of this chapter shall apply to all persons who shall do any work in and about the mines or oil wells mentioned in this chapter, or in hauling and transporting the products of such mines or oil wells at the request of the owner or owners thereof, or of his or their agent. [S. L. 1879, ch. 55, § 4.]

CHAPTER 3.

MECHANICS' AND BUILDERS' LIENS.

SECTION.
1507. Who may have lien.
1508. Notice to owner by sub-contractor.
1509. Owner to notify contractor.
1510. Liability of owner.
1511. Procedure to obtain liens.

SECTION.
1512. Action to enforce lien.
1513. Fees for recording.
1514. Entry of satisfaction.
1515. Failure to satisfy—Penalty.
1516. Laramie County excepted.

Who may have lien.

SEC. 1507. Any person who shall perform any labor, or furnish any material or machinery, for the erection, repair, or removal of any house, mill, manufactory, or other building, or appurtenance, by virtue of a contract or agreement, express or implied, with the owner thereof or his agent, shall have a lien to secure the payment of the same, upon such house, mill, manufactory, or other building, or appurtenance, and the lot of land upon which the same shall stand. [C. L. 1876, ch. 77, p. 459, § 1.]

Notice to owner by sub-contractor.

SEC. 1508. Every mechanic or other person doing or performing any work, or furnishing any material for the erection, repair or removal of any house, mill, manufactory or other building or appurtenance, erected, repaired or removed, under a contract or agreement, express or implied, between the owner thereof or his agent, and the builder thereof or other person, whether such work shall be performed, or material furnished as journeyman, laborer, sub-contractor, or otherwise, whose demand for work so done or material so furnished, has not been paid, may deliver to the owner of such building or his agent, an attested account of the amount and value of the work and labor thus performed, or the materials thus furnished and remaining unpaid; and thereupon such owner or his agent, shall retain, out of his subsequent payments to the contractors, the amount of such work and labor, or material furnished, for the benefit of the person so performing or furnishing the same. [C. L. 1876, ch. 77, p. 460, § 2.]

Owner to notify contractor.

SEC. 1509. Whenever any account of labor performed or material furnished, as referred to in the preceding section, shall be placed in the hands of the owner of any building, or his agent, as above stated, it shall be the duty of such owner or agent to furnish his contractor with a copy of such papers, so that, if there be any disagreement between such contractor and his creditor, they may, by amicable adjustment, or by arbitration, ascertain the true sum due; and if the contractor shall not, within ten days after the receipt of such papers, give the owner or his agent written notice that he intends to dispute the claim, or if, in ten days after giving notice, he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting to the demand, and the owner or his agent shall be justified in paying the same when it becomes due. [C. L. 1876, ch. 77, p. 460, § 3.]

Liability of owner.

SEC. 1510. The amount which may be due from any contractor to his creditor may be recovered from said owner by the creditor of said contractor, in an action at law, to the extent in value of any balance due by the owner to his contractor, under the contract with him at the time of the notice first given as aforesaid, or subsequently accruing to such contractor under the same. [C. L. 1876, ch. 77, p. 460, § 4.]

Procedure to obtain lien.

SEC. 1511. Any person entitled to a lien under this chapter shall make an account in writing of the items of labor, skill, machinery, and material furnished, or either of them, as the case may be, and after making oath thereto, shall, within ninety days from the time of completing such labor and skill, or furnishing the last item of such machinery and material, file the same in the office of the register of deeds of the county in which the building may be situated, for which such labor, skill, machinery or material shall have been furnished, and shall also file, at the same time, a correct description of the property to be charged with said lien, which account and description of said property, so made and filed, shall be recorded in a separate book to be provided for that purpose, and shall, from the time of the completion of the work or furnishing the material, and for one year thereafter, operate as a lien on the several descriptions of structures and buildings. and lots or parcels of land on which they stand, as in section fifteen hundred and seven named. When any labor has been done or materials furnished, as provided, on a written contract, the same, or a copy thereof, shall be filed with the account herein required to be filed; *Provided*, That all lien claims for erecting or repairing any building, doing any labor, or furnishing any material thereon or therefor, shall be concurrent liens upon the same, and the land whereon the same is erected, and shall be paid *pro rata* out of the proceeds arising from the sale thereof, if the same shall be sold. [C. L. 1876, ch. 77, p. 460, § 5. S. L. 1877, p. 137, § 1.]

Action to enforce lien.

SEC. 1512. Every person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied, and in all actions instituted under this chapter, all persons claiming liens upon the property sought to be affected, shall be made parties to such action or proceeding; and the rights of all parties to such action shall be determined by the court, and such order made therein as shall preserve and protect the rights of all such parties, under the provisions of this chapter. And the court or jury shall allow a reasonable attorney's fee to the person holding such lien and instituting such suit, which shall be included in the verdict or judgment. [C. L. 1876, ch. 77, p. 461, § 6. S. L. 1886, ch. 44, § 1.]

Fees for recording.

SEC. 1513. The county registers of deeds, for filing and recording all papers under this chapter, shall be paid the same fees as are, or hereafter may be, allowed by law for filing and recording deeds. [C. L. 1876, ch. 77, p. 461, § 7.]

Entry of satisfaction.

SEC. 1514. When any person who shall have filed his account and perfected his lien, pursuant to the provisions of this chapter, shall have received satisfaction for his claim, and the legal costs of his proceedings therein, he shall, upon the request of any person interested, and within six days, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same. [C. L. 1876, ch. 77, p. 461, § 8.]

Failure to satisfy—Penalty.

SEC. 1515. If any person having received satisfaction as specified in the preceding section, or having been tendered the amount due on his claim with legal costs, shall not, within six days after request, enter satisfaction as aforesaid, he shall forfeit and pay to the person aggrieved, double the amount of damages which may have been sustained in consequence of such refusal or neglect. [C. L. 1876, ch. 77, p. 461, § 9.]

Laramie County excepted.

SEC. 1516. This chapter shall not apply to Laramie County. [S. L. 1879, ch. 54, § 1.]

CHAPTER 4.

MECHANICS' AND BUILDERS' LIENS FOR LARAMIE COUNTY.

SECTION.
1517. Who entitled to, and extent of, lien.
1518. Extent of lien.
1519. Priority of lien.
1520. Lien upon leasehold and improvements.
1521. Filing and requisites of lien.
1522. Abstract of lien—Fees.
1523. Priority of lien.
1524. Pleadings and practice.
1525. Parties to action—Constructive service.
1526. Trials—Judgment—Attorney's fee.
1527. Judgment on default.
1528. Judgment on constructive service.
1529. Judgment on personal service.

SECTION.
1530. Execution—Homestead not exempt.
1531. Duration of lien.
1532. Entry of satisfaction.
1533. Failure to satisfy—Penalty.
1534. Notice of intended filing of lien.
1535. Contract to defend—Liability to owner.
1536. "Owner" and "proprietor" defined—Infants and married women.
1537. Liens to be concurrent.
1538. Lien for improvements made by tenant.
1539. Penalty for fraudulent use of material.
1540. Application of this chapter.

Who entitled to, and extent of lien.

SEC. 1517. Every mechanic or other person, who shall do or perform any work or labor upon, or furnish any material, fixtures, engines, boilers or machinery for any building, erection or improvement upon land, or for repairing the same, under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, trustee, contractor or sub-contractor, upon complying with the provisions of this chapter, shall have for his work or labor done, or materials, fixtures, boiler or machinery furnished, a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of one acre, or if such building, erection or improvements be upon any lot of land in any town, city or village, then such lien shall be upon such building, erection or improvement and the lot or land upon which the same are situated, to secure the payment for such work or labor done, or materials, fixtures, engine, boiler or machinery furnished. [S. L. 1877, p. 77, § 1.]

Extent of lien.

SEC. 1518. The entire land, to the extent aforesaid, upon which any such building, erection or other improvement is situated, including as well that part of the said land which is not covered with such building, erection or other improvement, as that part thereof which is covered with the same, shall be subject to all liens created by this chapter, to the extent of all the right, title and interest owned therein by the proprietor or owner of such building, erection or improvement for whose immediate use and benefit the labor was done, or things or material furnished. [S. L. 1877, p. 77, § 2.]

Priority of lien.

SEC. 1519. The lien for the things or materials furnished or work and labor performed shall attach to the building, erection or improvements for which they were furnished, or the work and labor was done, in preference to any prior lien or incumbrance or mortgage upon the land upon which said buildings, or erection, improvements or machinery have been erected or put, and any person enforcing such lien may have such building, erection or improvements sold under execution, and the purchaser thereof may remove the same within a reasonable time thereafter. [S. L. 1877, p. 77, § 3.]

As to priority of lien, see § 1523

Lien upon leasehold and improvements.

SEC. 1520. Every building or other improvement erected or material furnished, according to the provisions of this chapter, on any leased lot or land shall be held for the debt contracted for or on account of the same, also the leasehold term for such lot or lands on which the same is erected, and in case the lessee shall have forfeited his or her lease, the purchaser of the building or other improvements, and leasehold term, or so much thereof as remains unexpired, shall be held to be the assignee or assignees of such leasehold term, and as such shall be obligated to pay up to the lessor or lessors all arrears of rent or other money, interests and costs due under said lease, unless the lessor or lessors shall have regained possession of the leasehold, land or lot, or obtained judgment for the possession thereof, on account of the non-compliance of the lessee with the terms of the lease, prior to the commencement of the improvements thereon; in which case the purchaser of the improvements, under this chapter, shall have the right only to remove the improvements within sixty days after he or she shall purchase the same, and the owner or lessor of the lot or land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removing of the improvements. [S. L. 1877, p. 78, § 4.]

Filing and requisites of lien.

SEC. 1521. And it shall be the duty of every original contractor, within ninety days, and every sub-contractor, and every journeyman and day laborer, and every other person seeking to obtain the benefits of the provisions of this chapter, within fifty days after the indebtedness shall have accrued, to file in the office of the register of deeds of the proper county, a just and true account of the demand due him, or her, or them, after all just credits shall have been given, which is to be a lien upon such building or improvements, and a true description of the property, or so near as to identify the same, upon which said lien is intended to apply, with the name of the owner or owners, contractor or contractors, or both, if known to the person filing the lien, which in all cases shall be verified by the oath of the person filing the lien; or by some reliable person for him; *Provided*, That the original contractor shall not file a lien prior to the expiration of sixty days after the completion of his contract. [S. L. 1886, ch. 25, § 1.]

Abstract of liens—Fees.

SEC. 1522. It shall be the duty of the register of deeds to endorse upon every account so filed with him in his office the date of its filing, and make an abstract thereof in a book to be kept for that purpose and properly endorsed and indexed, containing the date of its filing, the name of the person or persons seeking to enforce said lien, the amount claimed, the name of the person or persons against whose property the lien is filed and a description of the property charged therewith; for all of which the said register of deeds shall receive a like fee as is now or may be hereafter allowed by law for the filing and recording of deeds, from the person filing the account or seeking to enforce the lien, which said amount shall be taxed and collected as other costs, in case there should be an action brought thereon. [S. L. 1877, p. 78, § 6.]

Priority of lien.

SEC. 1523. The lien for work and labor done and performed and for material furnished as aforesaid, shall be preferred to all other incumbrances which may be attached to or upon such building or other improvements or the ground, lot or land upon which they are situated or located, or either of them, subsequent to the commencement of such buildings or improvements. [S. L. 1877. p. 79, § 7.]

As to priority of lien, see § 1519.

Pleadings and practice.

SEC. 1524. The pleadings, practice, process and other proceedings in cases arising under this chapter shall be the same as in ordinary civil actions and civil proceedings in the courts of this territory, except as herein otherwise provided. The petition, among other things, shall allege the facts necessary for securing a lien under this chapter, and a description of the property charged therewith. [S. L. 1877, p. 79, § 8.]

Parties to action—Constructive service.

SEC. 1525. In all suits under this chapter the parties to the controversy shall, and all other persons interested in the matter in controversy, and in the property charged in the lien, may be made parties, but such as are not made parties shall not be bound by any such proceeding, and constructive service may be had upon any defendant in suits brought under this chapter who may be non-residents of the territory and cannot be personally served with summons within the territory in the same manner as constructive service is had in other cases at law. [S. L. 1886, ch. 25, § 4.]

Trial—Judgment—Attorney's fees.

SEC. 1526. There shall be ascertained, by trial in the usual way, the amount of the indebtedness for which the lien is prosecuted, and the court may render judgment therefor in any sum of money not exceeding the amount claimed in the demand filed with the lien, together with interest and costs, although the creditor may have unintentionally failed to enter the full amount of credits in his account filed, to which the debtor may be entitled, and in all suits or actions brought in the district court to obtain a judgment on such account and to enforce the lien, when the plaintiff or complainant shall obtain judgment or decree, the sum of twenty-five dollars, for attorney's fees, shall also be taxed as costs and recovered from the adverse party. [S. L. 1877, p. 79, § 10.]

Judgment on default.

SEC. 1527. Judgment by default shall be rendered against every defendant who, after being duly summoned or notified, according to law, shall not appear and plead or answer within the time allowed by law in ordinary civil actions. [S. L. 1877, p. 80, § 11.]

Judgment on constructive service.

SEC. 1528. When the debtor has not been personally served with process according to law, but has been lawfully notified by publication, the judgment, if for the plaintiff, shall be that he recover the amount of the indebtedness found to be due and the cost of suit, to be levied out of the property charged with the lien therefor, which said property shall be correctly described in said judgment. [S. L. 1877, p. 80, § 12.]

Judgment on personal service.

SEC. 1529. When the debtor has been served with summons, or appears at the action without service of summons, the judgment, if for plaintiff, shall be against such debtor, as in ordinary cases, with the addition that if no sufficient property of the debtor can be found to satisfy such judgment and costs of suit, then the residue thereof to be levied as provided in the next preceding section. [S. L. 1877, p. 80, § 13.]

Execution—Homestead not exempt.

SEC. 1530. The execution to be issued shall be a special *fieri facias* and shall be in conformity with the judgment, and such writ shall be returnable as in ordinary executions, and the advertisement, sale and conveyance of real and personal estate, under the same, shall be made as in ordinary executions; and in no case shall a homestead or the building thereon be exempt as against any lien which may be taken under the provisions of this chapter. [S. L. 1877, p. 80, § 14.]

Duration of lien.

SEC. 1531. All actions under this chapter shall be commenced within six months after the filing of the lien, and prosecuted without delay to final judgment, and no lien shall continue to exist by virtue of the provisions of this chapter for more than six months after the lien shall be filed, unless within that time an action shall be instituted thereon, as hereinbefore described. [S. L. 1886, ch. 25, § 3.]

Entry of satisfaction,

SEC. 1532. Whenever any debt, which is a lien on any building or other improvement, shall be paid and satisfied, the lien creditor, if required, shall acknowledge such satisfaction upon the record or on the margin thereof, in the office of the register of deeds of the proper county, for which said acknowledgment shall be allowed the sum of fifty cents. [S. L. 1877, p. 80, § 16.]

Failure to satisfy—Penalty.

SEC. 1533. If any creditor refuses or neglects to enter satisfaction within ten days after payment and request as aforesaid, he shall be liable to any person injured to the amount of such injury and cost of suit. [C. L. 1876, ch. 80, § 17.]

Notice of intended filing of lien.

SEC. 1534. Every person, except the original contractor, who may wish to avail himself of the benefits of the provisions of this chapter, shall give ten days notice, in writing, before filing the lien, as herein required, to the owner, owners or agent, or either of them, that he or they hold a claim against such building or improvement, stating in said notice the amount of the same and from whom it is due. [C. L. 1876, ch. 81, § 18.]

Contractor to defend—Liability to owners.

SEC. 1535. In cases where a lien shall be filed under the provisions of this chapter, by any person other than a contractor, it shall be the duty of the contractor to defend any action brought thereon at his own expense, and during the pendency of such action the owner or agent may withhold from the contractor the amount of money for which said lien shall be filed, and in case of judgment being rendered against the owner or his property upon the lien, he shall be entitled to deduct from any amount due by him to the contractor the amount of such judgment and costs, and if he shall have settled in full with the contractor he shall be entitled to recover back from the contractor any amount so paid by the owner for which the contractor was originally liable. [C. L. 1876, ch. 81, § 19.]

"Owner" and "proprietor" defined—Infants and married women.

SEC. 1536. Every person for whose immediate use, enjoyment or benefit any building, erection or improvement shall be made, shall be included by the word "owner" or "proprietor" thereof, under this chapter, not excepting such as may be minors over the age of eighteen years, and married women; and in case the husband of any married women shall enter into any contract for the performance of any work, or the furnishing of any material, for which a lien is provided by this chapter for the benefit of the wife's property, the husband so contracting shall be deemed *prima facie* to be the agent of his wife owning such property. [S. L. 1886, ch. 25, § 2.]

Liens to be concurrent.

SEC. 1537. The liens for work and labor done or material furnished, as specified in this chapter, shall be upon an equal footing, without reference to the dates of the filing of the account or lien, and in all cases where a sale shall be ordered and the moneys arising from such sale be not sufficient to discharge in full all of the liens against the same, without reference to the dates of filing, said accounts or liens shall have been filed and suit brought thereon, as provided in this chapter. [S. L. 1877, p. 81, § 21.]

Lien for improvements made by tenant.

SEC. 1538. In all cases where a tenant is authorized by the landlord to put any improvements either within or on the outside of any building or upon the land upon which such building shall stand, the person doing any work or furnishing any material for the purpose of such improvement, shall have the same lien upon such house and land as is provided for in section fifteen hundred and seventeen; *Provided*, It is agreed that the landlord is to pay the costs of such improvement. [S. L. 1877, p. 81, § 22.]

Penalty for fraudulent use of material.

SEC. 1539. Any contractor or sub-contractor who shall purchase materials on credit and represent at the time of said purchase that the same are to be used in a certain designated building or other improvement, and shall thereafter use, or cause to be used, or allow to be used, with his knowledge, the said materials or any of them in the construction of or upon any building or improvement other than that designated, with intent to defraud the person or persons from whom the said materials were purchased, shall be deemed guilty of a misdemanor, and upon conviction thereof shall be imprisoned in the county jail for a term of not less than three months and a fine of not less than fifty dollars. [S. L. 1877, p. 82, § 23.]

Application of this chapter.

SEC. 1540. This chapter shall apply to Laramie County only. [S. L. 1877, p. 82, § 23.]

TITLE 28. MARRIAGE AND DIVORCE.

CHAPTER 1. MARRIAGE.
CHAPTER 2. MARRIAGE AS AFFECTING THE PERSONAL AND PROPERTY RIGHTS OF THE PARTIES.
CHAPTER 3. DIVORCE AND ALIMONY.

CHAPTER 1.

MARRIAGE.

SECTION.
1541. Is civil contract.
1542. Marriageable age defined.
1543. Void marriage not to be solemnized.
1544. License necessary.
1545. Parents' consent necessary to minor's marriage.
1546. Clerk to require evidence of competency.
1547. When license to be refused.
1548. Who may solemnize marriages.
1549. Form of ceremony.
SECTION.
1550. Certificate of marriage.
1551. Return of marriages to county clerk.
1552. Record of marriages.
1553. Offenses relating to marriages.
1554. Effect of solemnization by unauthorized person.
1555. Marriage according to rites of religious sects valid.
1556. Certificate as evidence.
1557. Foreign marriages.

Is civil contract.

SEC. 1541. In law, marriage is considered a civil contract, to which the consent of parties capable of contracting is essential. [C. L. 1876, ch. 81, § 1.]

Marriageable age defined.

SEC. 1542. At the time of marriage the male must be of the age of eighteen years or upwards, and the female of the age of sixteen or upwards. [C. L. 1876, ch. 81, § 2.]

Void marriages not to be solemnized.

SEC. 1543. Marriages that are declared void by the divorce law of this territory, shall, in no case be solemnized. [C. L. 1876, ch. 81, § 3.]

License necessary.

SEC. 1544. Previous to the solemnization of any marriage in this territory, a license for that purpose must be obtained from the county clerk of the county wherein the marriage is to take place. [C. L. 1876, ch. 81, § 4.]

Parents' consent necessary to minor's marriage.

SEC. 1545. When either party is a minor, no license shall be granted without the verbal consent, if present, and written consent, if absent, of the father, if living, if not, then of the mother of such minor, or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness. [C. L. 1876, ch. 81, § 5.]

Clerk to require evidence of competency.

SEC. 1546. When application shall be made for a license, the county clerk shall, by the testimony of some competent witness, or of the applicant, ascertain the christian and surname of the parties, their respective places of residence, that they are of sufficient age to be capable in law of contracting marriage, and whether there be any legal impediment to the parties entering into the marriage contract, and he shall enter the facts so ascertained, and date the license, in a book to be kept by him for that purpose. [C. L. 1876, ch. 81, § 6.]

When license to be refused.

SEC. 1547. If, on such testimony being given, it shall appear that either of the parties is legally incompetent to enter into such contract, or that there is any impediment in the way; or if either party is a minor, and the consent hereinbefore mentioned shall not be given, the said clerk shall refuse to grant a license. [C. L. 1876, ch. 81, § 7.]

Who may solemnize marriages.

SEC. 1548. Every judge and justice of the peace, and every licensed or ordained preacher of the gospel, may perform the ceremony of marriage in this territory. [C. L. 1876, ch. 81, § 8.]

Form of ceremony.

SEC. 1549. In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate or minister, and the attending witnesses, that they take each other as husband and wife, and in any case there shall be at least two witnesses beside the minister or magistrate, present at the ceremony. [C. L. 1876, ch. 81, § 9.]

Certificate of marriage.

SEC. 1550. When a marriage shall have been solemnized, pursuant to the provisions of this chapter, the minister or magistrate who solemnized the same, shall give each of the parties, on request, a certificate under his hand, specifying the names, ages and place of residence of the parties married, the names and residences of at least two witnesses who were present at such marriage, and the time and place thereof. [C. L. 1876, ch. 81, § 10.]

Return of marriages to county clerk.

SEC. 1551. Every person having authority to join others in marriage, shall within three months after the solemnization of any such marriage, make and deliver to the county clerk of the county in which the marriage took place, a certificate containing the particulars mentioned in the preceding section. [C. L. 1876, ch. 81, § 11.]

Record of marriages.

SEC. 1552. The county clerk of each county in the territory shall record all such returns of such marriages in a book to be kept for that purpose, within one month after receiving the same. [C. L. 1876, ch. 81, § 12.]

Offenses relating to marriages.

SEC. 1553. If any justice, minister, or other person, whose duty it is to make and transmit to the county clerk such certificate, shall neglect to make and deliver the same, or if the county clerk shall neglect to record such certificate, or if any person shall undertake to join others in marriage, knowing that he is not legally authorized so to do, or knowing of any legal impediment to the proposed marriage, or if any person authorized to solemnize any marriage shall wilfully and knowingly make a false certificate of any marriage to the county clerk, or if the said county clerk shall wilfully and knowingly make a false record of any certificate of marriage to him made, he shall be deemed guilty of misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or imprisonment for a period not exceeding one year, at the discretion of the court. [C. L. 1876, ch. 81, § 13.]

Effect of solemnization by unauthorized person.

SEC. 1554. No marriage solemnized before any person professing to be a justice of the peace or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed justice or minister; *Provided*, The marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. [C. L. 1876, ch. 81, § 14.]

Marriage according to rites of religious sects valid.

SEC. 1555. It shall be lawful for any religious society to join together in marriage, such persons as are of the said society, according to the rites and customs of such society to which they belong, the clerk or keeper of the minutes, proceedings, or other book of the religious society wherein such marriage shall be had; or if they be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the county clerk of the county, a certificate of the marriage, and the same shall be recorded in like manner as is hereinbefore provided. [C. L. 1876, ch. 81, § 15.]

Certificate as evidence.

SEC. 1556. The original certificate and record of marriage made by the minister, officer, or person, as prescribed in this chapter, and the record thereof made as prescribed, or a copy of such record duly certified by such officer, shall be received in all courts and places as presumptive evidence of the fact of such marriage. [S. L. 1876, ch. 81, § 16.]

Foreign marriages.

SEC. 1557. All marriage contracts without this territory, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this territory. [C. L. 1876, ch. 81, § 17.]

CHAPTER 2.

MARRIAGE AS AFFECTING THE PERSONAL AND PROPERTY RIGHTS OF THE PARTIES.

SECTION.
1558. Separate estate of married women.
1559. Contracting powers of married women.
1560. Married women may sue and be sued.
1561. May make will.
1562. May carry on business, etc.

SECTION.
1563. Husband not liable for ante-nuptual debts.
1564. Wife's estate liable for ante-nuptual debts.
1565. Liability for torts of wife.
1566. Husband's deed not to affect wife's lands.

Separate state of married women.

SEC. 1558. All the property, both real and personal, belonging to any married woman as her sole and separate property, or which any woman hereafter married owns at the time of her marriage, or which any married woman during coverture acquires in good faith from any person other than her husband, by descent or otherwise, together with all the rents, issues, increase and profits thereof shall, notwithstanding her marriage, be and remain, during coverture, her sole and separate property, under her sole control, and be held, owned, possessed and enjoyed by her the same as though she were sole and unmarried, and shall not be subject to the disposal, control or interference of her husband, and shall be exempt from execution or attachment for the debts of her husband. [C. L. 1876, ch. 82, § 1.]

Contracting powers of married women.

SEC. 1559. Any married woman may bargain, grant, sell and convey her property of any kind, whether real, personal or mixed, and enter into any contract in reference to the same in the same manner and to the same extent as if she were unmarried. [S. L. 1882, ch. 68, § 3.]

Married woman may sue and be sued.

SEC. 1560. Any woman may, while married, sue and be sued in all matters having relation to her property, person or reputation, in the same manner as if she were sole. [C. L. 1876, ch. 82, § 3.]

May make will.

SEC. 1561. Any woman may, while married, make a will the same as though she were sole. [C. L. 1876, ch. 82, § 4.]

May carry on business, etc.

Sec. 1562. Any married woman may carry on any trade or business and perform any labor or services on her sole and separate account and the earnings of any married woman from her trade, business, labor or services, shall be her whole and separate property and may be used and intrusted by her in her own name, and she may sue and be sued as if sole in regard to her trade, business, labor, services and earnings, and her property acquired by trade, business and services and the proceeds thereof, may be taken on any execution against her, except where the same shall be exempt under the exemption laws of the territory. [C. L. 1876, ch. 82, § 5.]

Husband not liable for ante-nuptual debts.

Sec. 1563. Under no marriage contracted after December fourth, eighteen hundred and sixty-nine, shall the husband be liable for the debts and the liabilities of the wife contracted before marriage, without an assumption, in writing, of such debts and liabilities. [C. L. 1876, ch. 82, § 6.]

Wife's estate liable for ante-nuptual debts.

Sec. 1564. When any woman against whom liabilities exist, shall marry, and has or acquires lands, judgments on such liability may be rendered against her, to be levied on such lands only. [C. L. 1876, ch. 82, § 7.]

Liability for torts of wife.

Sec. 1565. When any judgment is rendered against a husband and wife for the tort of the wife, execution on such judgment shall first be levied on the lands of such wife, if she have any. [C. L. 1876, ch. 82, § 8.]

Husband's deed not to affect wife's lands.

Sec. 1566. The separate deed of the husband shall convey no interest in the wife's lands. [C. L. 1876, ch. 82, § 9.]

CHAPTER 3.

DIVORCE AND ALIMONY.

SECTION.
1567. Void marriages defined.
1568. Marriage without legal consent voidable.
1569. Petition to annul marriage.
1570. Petition to affirm marriage.
1571. Causes for divorce.
1572. Required residence of plaintiff.
1573. Collusion or equal guilt prevents divorce.
1574. Parties competent to sue and testify.
1575. Process may issue to any county.
1576. Action how conducted.
1577. Restraint of husband during litigation.
1578. Temporary alimony—Costs.
1579. Care and custody of children.
1580. Provision for children in decree.
1581. Disposition of property—Alimony.
1582. Restraining orders may be granted during litigation.
1583. Examination of husband.
1584. Petition for support of wife and children.
1585. Disposition of wife's personal estate.
SECTION.
1586. Court may appoint trustees for children.
1587. Decree for alimony, etc., may be revised.
1588. Legitimacy of children presumed.
1589. Certain divorces not to affect legitimacy of children.
1590. Divorce because of prior marriage—Form of decree—Legitimacy of children.
1591. When issue deemed illegitimate.
1592. Annulling marriage when party under age—Restrictions.
1593. Next friend to prosecute for idiot.
1594. Petition by restored lunatic.
1595. Custody of children on annulling marriage.
1596. Physical incapacity as cause for divorce—Restrictions.
1597. Corroborating evidence required.
1598. Proof of adultery insufficient when.
1599. Residence of married woman.
1600. Certain divorces legalized.

Void marriages defined.

Sec. 1567. Marriages are void without any decree of divorce that may hereafter be contracted in this territory:

First— When either party has a husband or wife living at the time of contracting the marriage;

Second— When either party is insane or an idiot at the time of contracting the marriage;

Third—When the parties stand in the relation to each other of parent and children, grand-parent and grand-children, brothers and sisters, of half as well as of whole blood, uncle and niece, aunt and nephew, and first cousins, and this sub-division extends to illigitimate as well as legitimate children and relations; *Provided*, That this prohibition shall not extend to any persons not related by consanguinity. [S. L. 1882, ch. 40, § 1.]

Marriages without legal consent voidable.

SEC. 1568. In case of a marriage solemnized when either of the parties are under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable. [S. L. 1882, ch. 40, § 2.]

Petition to annul marriage.

SEC. 1569. When a marriage is supposed to be void, or the validity thereof is doubted for any of the causes mentioned in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition in the district court of the county where the parties or one of them reside, for annulling the same, and such shall be filed, and proceedings shall be had thereon, as in the case of a petition filed in said court for divorce, and upon due proof thereof it shall be declared void by a decree of nullity. [S. L. 1882, ch. 40, § 3.]

Petition to affirm marriage.

SEC. 1570. When the validity of any marriage shall be denied or doubted by either of the parties, the other party ~~may file a~~ petition in the manner aforesaid for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a decree of the court, and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned. [S. L. 1882, ch. 40, § 4.]

Causes for divorce.

SEC. 1571. A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them reside, on the application of the aggrieved party by petition, in either of the following cases:

First—When adultery has been committed by any husband or wife;

Second—When one of the parties was physically incompetent at the time of the marriage, and the same has continued to the time of the divorce;

Third—When one of the parties has been convicted of a felony and sentenced to imprisonment therefor in any prison, and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights;

Fourth—When either party has wilfully deserted the other for the term of one year;

Fifth—When the husband or wife shall have become an habitual drunkard;

Sixth—When one of the parties has been guilty of extreme cruelty to the other;

Seventh—When the husband for the period of one year, has neglected to provide the common necessaries of life, when such neglect is not the result of poverty, on the part of the husband, which he could not avoid by ordinary industry;

Eighth—When either party shall offer such indignities to the other, as shall render his or her condition intolerable;

Ninth—When the husband shall be guilty of such conduct as to constitute him a vagrant within the meaning of the law respecting vagrancy;

Tenth—When prior to the contract of marriage or the solemnization thereof, either party shall have been convicted of a felony or infamous crime in any state, territory or county without knowledge on the part of the other party of such fact at the time of such marriage;

Eleventh When the intended wife at the time of contracting marriage, or at the time of the solemnization thereof shall have been pregnant by any other man than her intended husband and without his knowledge at the time of such solemnization. [S. L. 1882, ch. 40, § 5.]

Required residence of plaintiff.

SEC. 1572. No divorce shall be granted unless the plaintiff shall have resided in this territory for six months immediately preceding the time of filing the petition, or unless the marriage was solemnized in this territory, and the applicant shall have resided therein from the time of the marriage to the time of filing the petition. [S. L. 1882, ch. 40, § 6.]

Collusion or equal guilt prevents divorce.

SEC. 1573. No divorce shall be decreed in any case where it shall appear that the petition therefor was founded in, or exhibited by, collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the defendant. [S. L. 1882, ch, 40, § 7.]

Parties competent to sue and testify.

SEC. 1574. A petition for a divorce may be exhibited by a wife in her own name as well as a husband, and each party in a divorce proceeding shall be competent to testify in his or her own behalf. [S. L. 1882, ch. 40, § 8. S. L. 1886, ch, 60, § 153.]

Process may issue to any county.

SEC. 1575. In an action to annul or affirm a marriage, or for a divorce, when the plaintiff resides in the county in which the action is brought, and the defendant is a non-resident of said county, or is absent therefrom, and is residing or is to be found in some other county of the territory, the summons or process at the request of the plaintiff may issue to such other county and service upon said defendant in such other county shall give to the court jurisdiction. [S. L. 1882, ch. 40, § 9.]

Action, how conducted.

SEC. 1576. Actions to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as civil actions, and the court shall have the power to award issues, to decree costs, and enforce its decree as in other cases. [S. L. 1882, ch. 40, § 10.]

Restraint of husband during litigation.

SEC. 1577. After the exhibition of the petition to annul a marriage, or for a divorce from the bonds of matrimony, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty, during the pendancy of the action. [S. L. 1882, ch. 40, § 11.]

Temporary alimony—Costs.

SEC. 1578. In every action brought for a divorce, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on, or defend the action, and for her support, and the support of the children of the parties during its pendency, and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver, and the court may also direct the payment to the wife for such purpose of any sum or sums that may be due and owing to the husband from any party, person or corporation. [S. L. 1882, ch. 40, § 12.]

Care and custody of children.

SEC. 1579. The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of such action, as shall be deemed proper and necessary, and for the benefit of the children and may enforce its order and decree in the manner provided in the last preceding section. [S. L. 1882, ch. 40, § 13.]

Provision for children in decree.

SEC. 1580. The court, in granting a divorce, and also upon pronouncing a decree of nullity of a marriage, may make such disposition of, and provision for, the children as shall appear most expedient under all the circumstances, and most for the present comfort and future well-being of such children; and the court may from time to time afterward on the petition of either of the parents, revise and alter such decree concerning the care, custody and maintenance of such children, as the circumstances of the parents and the benefit of the children shall require. [S. L. 1882, ch. 40, § 14.]

Disposition of property—Alimony.

SEC. 1581. In granting a divorce, the court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the wife and children, and the court may also decree to the wife reasonable alimony out of the estate of the husband having regard for his ability, and to effectuate the purposes aforesaid, may order so much of his real estate or the rents and profits thereof, as is necessary to be assigned and set out to the wife for life, or may decree a specific sum to be paid by him to her, and use all necessary legal and equitable processes to carry its decrees into effect. [S. L. 1882, ch. 40, § 15.]

Restraining orders may be granted during litigation.

SEC. 1582. If after filing a petition for divorce, it shall be made to appear probable to the court, or the judge in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, and such legal or equitable process issued as the court may deem necessary or proper. [S. L. 1882, ch. 40, § 16.]

Examination of husband.

SEC. 1583. In a proceeding for divorce, the court or judge in vacation may cause the attendance of the husband and compel him to answer under oath concerning his property, rights or interests, or money that he may have, or money due or to become due to him from others, and make such order thereon as shall seem just and equitable; and to enforce its orders concerning alimony, temporary or permanent, or property or pecuniary interests, the court, or judge in vacation, may require security for obedience thereto, or may enforce the same by attachment, commitment, injunction or by other means, according to the usages of courts. [S. L. 1882, ch. 40, § 17.]

Petition for support of wife and children.

SEC. 1584. When the husband and wife are living separately, or when they are living together, but the husband failing and neglecting to contribute to the support of the wife and children, or either, and no proceeding for divorce is pending the wife may in behalf of herself or minor children if any or either, institute a proceeding by petition setting forth fully her case and upon five days notice to the husband, if he can be served personally with notice in the territory, the judge may hear the same in term or vacation, and grant such order concerning the support of the wife and children or either, as he might grant, were it based on a pending proceeding for divorce, to be enforced in the same manner, together with any remedy applicable in a court of equity, such as appointing a receiver and the like. In case the husband cannot be personally served with process within this territory, but has property within the jurisdiction of the court, or debts owing to him, the court or judge in vacation may order such constructive service as shall appear sufficient and proper and may cause a sequestration or attachment of said property and upon completion of said constructive service as ordered shall have the same power to act as if personal service was had. [S. L. 1882, ch. 40, § 18.]

Disposition of wife's personal estate.

SEC. 1585. Whenever the nullity of a marriage or a divorce from the bonds of matrimony for any cause, except that of adultery committed by the wife, shall be decreed, the wife shall be entitled to the whole or such part as the court shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or the court may award to her the value thereof, to be paid by her husband in money. [S. L. 1882, ch. 40, § 19.]

Court may appoint trustees for children.

SEC. 1586. Upon every divorce when provision is made for the children, the court may order any amount set apart for them, instead of being delivered to the wife or husband to be paid into the hands of a trustee or trustees, to be appointed by the court, upon trust to invest the same, and to apply the income thereof to the support of such children or any of them, in such manner as the court shall direct. [S. L. 1882, ch. 40, § 20.]

Decree for alimony, etc., may be revised.

SEC. 1587. After a decree for alimony or other allowance for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, the court may, from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony or allowance, or the payment thereof, and respecting the appropriation and payment of the principal and income of the property so held in trust and may make any decree respecting any of said matters which such court might have made in the original action. [S. L. 1882, ch. 40, § 21.]

Legitimacy of children presumed.

SEC. 1588. A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children if questioned may be determined by the court upon proofs in the case, and in every case the legitimacy of all children begotten before the commencement of the action, shall be presumed until the contrary is shown. [S. L. 1882, ch. 40, § 22.]

Certain divorces not to affect legitimacy of children.

SEC. 1589. Upon the dissolution of a marriage on account of the nonage, insanity or idiocy of either party, the issue of the marriage shall be deemed to be in all respects, the legitimate issue of the parent, who at the time of the marriage was capable of contracting or if neither parent be of age, then of the eldest parent. [S. L. 1882, ch. 40, § 23.]

Divorce because of prior marriage—Form of decree—Legitimacy of children.

SEC. 1590. When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage was contracted in good faith and with the full belief of the parties that the former wife or husband was dead, or that one of the parties was ignorant of the fact that the other had a wife or husband living, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage born or begotten before the commencement of the action shall be deemed to be the legitimate issue of the parent who at the time of the marriage was capable of contracting. [S. L. 1882, ch. 40, § 24.]

When issue deemed illegitimate.

SEC. 1591. Upon the dissolution by decree of nullity of any marriage that is prohibited on account of consanguinity between the parties, the issue of the marriage shall be deemed to be illegitimate. [S. L. 1882, ch. 40, § 25.]

Annulling marriage when party under age.

SEC. 1592. An action to annul a marriage on the ground that one of the parties was under the age of legal consent may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife. [C. L. 1882, ch. 40, § 26.]

Next friend to prosecute for idiot.

SEC. 1593. A petition to annul a marriage on the ground of insanity or idiocy may be exhibited by any person admitted by the court to prosecute as the next friend of such idiot or lunatic. [S. L. 1882, ch. 40, § 27.]

Petition by restored lunatic.

SEC. 1594. The marriage of a lunatic may also be declared void upon the application of the lunatic after the restoration of reason, but in such cases no decree of nullity shall be pronounced if it shall appear that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind. [S. L. 1882, ch. 40, § 28.]

Custody of children on annulling marriage.

SEC. 1595. If there shall be any issue of a marriage annulled on the ground of force or fraud, the court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party. [S. L. 1882, ch. 40, § 29.]

Physical incapacity as cause for divorce—Restrictions.

SEC. 1596. An action to annul a marriage on the ground of the physical incapacity of one of the parties shall only be maintained by the injured party against the party whose incapacity is alleged, and shall in all cases be brought within two years from the solemnization of the marriage. [S. L. 1882, ch. 40, § 30.]

Corroborating evidence required.

SEC. 1597. No decree of divorce, and of the nullity of a marriage, shall be made solely on the declarations, confessions or admissions of the parties, but the court shall in all cases require other evidence in its nature corroborative of such declarations, concessions or admissions. [S. L. 1882, ch. 40, § 31.]

Proof of adultery insufficient when.

SEC. 1598. In any action brought for divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

First—When the offense shall appear to have been committed by the procurement, or with the connivance of the plaintiff;

Second—When the offense charged shall have been forgiven by the injured party and such forgiveness shall be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense;

Third—When there shall have been no express forgiveness and no voluntary cohabitation of the parties but the action shall not have been brought within three years after discovery by the plaintiff of the offense charged. [S. L. 1882, ch. 40, § 32.]

Residence of married woman.

SEC. 1599. If any married woman at the time of exhibiting a petition against her husband, under the provisions of this chapter, shall reside in this territory, she shall be deemed a resident thereof, although her husband may reside elsewhere. [S. L. 1882, ch. 40, § 33.]

Certain divorces legalized.

SEC. 1600. WHEREAS, There are doubts of the legality of some of the divorces heretofore decreed in this territory, because of the manner in which notice of the pendency of the proceedings was given; therefore,

Be it enacted by the Council and House of Representatives of the Territory of Wyoming: All divorces heretofore decreed in the courts of this territory are hereby declared legal and valid, so far as such divorces may be illegal or invalid because of the manner in which notice of the pendency of proceedings for divorce was given. [C. L. 1876, ch. 44, p. 296.]

TITLE 29. MILITIA.

CHAPTER 1.

GENERAL PROVISIONS.

SECTION.
1601. Acting militia.
1602. Formation of companies.
1603. Constitution and by-laws.
1604. When arms issued to company.
1605. When militia subject to call.
1606. System of discipline.
1607. Removal of officers.
1608. Penalty for neglect of duty.

SECTION.
1609. Regimental officers.
1610. Regiment defined—Staff officers.
1611. Governor may call out militia.
1612. When senior officers may call militia.
1613. When sheriff may call militia.
1614. Terms of office of commissioned officers.
1615. Brigadier-general.
1616. Organization and duty of militia.

Acting militia.

SEC. 1601. The acting militia of this territory shall consist of volunteer companies, to be composed of men between the ages of eighteen and forty-five years. [C. L. 1876, ch. 84, § 1.]

Formation of companies.

SEC. 1602. Whenever forty or more men, not exceeding one hundred, shall associate themselves together for the purpose of forming a volunteer company, they shall proceed to organize such company by the election of one captain, one first and one second lieutenant, who shall be commissioned by the governor as soon as notified of such organization by the captain of said company; *Provided*, That any company shall be deemed to be duly organized upon the election of officers. [C. L. 1876, ch. 84, § 2.]

See § 1616.

Constitution and by-laws.

SEC. 1603. Any volunteer company shall have power to adopt such constitution and by-laws, for its government and discipline, not inconsistent with the laws of this territory, as a majority of the members thereof shall deem proper. [C. L. 1876, ch. 84, § 3.]

When arms issued to company.

SEC. 1604. The governor shall, when notified of the organization of any company under the provisions of this title, cause to be delivered to the captain of such company, a sufficient number of arms and accoutrements to properly equip the same, if at his disposal, taking bond therefor, with approved security, for the return of said arms, should a return be ordered by any lawful authority of the territory. [C. L. 1876, ch. 84, § 4.]

When militia subject to call.

SEC. 1605. Any volunteer militia organized under the provisions of this title, may be called out at any time in case of war, or invasion, to prevent insurrection, suppress riots, or aid the civil authorities in the execution of the laws, and to act in case of Indian outbreak or depredations; *Provided*, That every such company or force of volunteer militia, shall be in strict subordination to the civil powers of the territory. [C. L. 1876, ch. 84, § 5.]

System of discipline.

SEC. 1606. The system of discipline and field exercise used by the army of the United States, in the different corps of cavalry, infantry and artillery, shall be observed by all companies in the exercise and discipline of said corps respectively. [C. L. 1876, ch. 84, § 6.]

Removal of officers.

SEC. 1607. Any commissioned officer may be removed by the governor, on a petition of two-thirds of the members of the company, battalion or regiment, to which he may belong. [C. L. 1876, ch. 84, § 7.]

Penalty for neglect of duty.

SEC. 1608. Every officer and member of a volunteer company, for any neglect or refusal of duty required by the constitution and by-laws thereof, shall forfeit and pay such sums as may be prescribed by such laws, which may be recovered in civil action before any justice of the peace, as in other actions, upon complaint of any member of said company. [C. L. 1876, ch. 84, § 8.]

Regimental officers.

SEC. 1609. Whenever three companies, or more, not exceeding five, shall be organized, the commissioned officers of the same may elect a commanding officer, who shall rank as major, and when five or more companies, not to exceed eight, shall be organized, the commissioned officers thereof may elect one lieutenant-colonel, who shall have command of the battalion, and when eight companies shall be organized, the commissioned officers of the companies comprising the regiment thus formed, may elect a colonel to command such regiment. [C. L. 1876, ch. 84, § 9.]

Regiment defined—Staff officers.

SEC. 1610. A regiment of volunteer militia shall consist of eight companies, and whenever organized by the election of a colonel, he shall have power to, and may appoint, one adjutant, one quarter-master and one surgeon, each of whom shall rank as captain, and be commissioned by the governor; he may also appoint one sergeant major, and such officer thus appointed shall constitute his staff. [C. L. 1876, ch. 84, § 10.]

Governor may call out militia.

SEC. 1611. The governor shall have power to, and may as commander-in-chief of the militia of this territory, call out any part or all of the volunteer militia, or any of the citizens of the territory who may desire to volunteer for the purpose of repelling invasion, preventing insurrection, suppressing riots, aiding the civil authorities in executing the laws, and to prevent Indian depredations. [C. L. 1876, ch. 84, § 11.]

When senior officer may call militia.

SEC. 1612. If at any time, in any county of this territory, the services of the volunteer militia shall be required for any of the purposes mentioned in the preceding section, and prompt action is necessary for the protection of the citizens of such county the senior volunteer officer nearest the locality shall have the right to call out, for active duty, a sufficient number of the militia to secure such protection, and shall at the same time give notice of his action to the governor; *Provided*, That such action shall only apply in cases where time, and the urgency of the case, shall prevent previous notice to the governor. [C. L. 1876, ch. 84, § 12.]

When sheriff may call militia.

SEC. 1613. Should no militia officer be present to issue the call provided for in the preceding section, the sheriff of such county shall have power to issue such call, but the citizens who may volunteer under said call, and the militia that may assemble, shall have power to elect their commanding officer, if no commissioned officer of the militia be present. [C. L. 1876, ch. 84, § 13.]

Terms of office of commissioned officers.

SEC. 1614. The commissioned officers of each company, battalion, or regiment of volunteer militia, shall hold their offices for two years, unless sooner removed, as herein provided, and the non-commissioned officers and privates of each company, after being members thereof for two years, shall, if they desire, be entitled to and receive a certificate, each, of such membership, from the captain of their company. [C. L. 1876, ch. 84, § 14.]

Brigadier general.

SEC. 1615. Whenever two regiments of volunteer militia shall be organized in the manner hereinbefore provided, the commissioned officers of such regiments shall have power to, and may elect one brigadier-general, who shall be commander of the brigade thus organized, and who may appoint the same number of staff officers, with the same rank as those of a brigadier-general in the army of the United States. [C. L. 1876, ch. 84, § 15.]

Organization and duty of militia.

SEC. 1616. It shall be lawful for any number of the citizens of the territory, not less than fifty, by and with the consent of the governor, to organize a territorial militia for offensive and defensive purposes. Such militia organization may adopt such rules and regulations by and with the approval of the governor as they may deem proper; such rules and regulations shall conform as nearly as possible to the rules and regulations adopted by the national guards of the United States. Such militia organization shall be under the control and subject to the call of the governor, who shall be commander-in-chief of such militia organization. They shall be in camp at least one week in each year. Such militia organization shall receive no compensation unless called upon by the governor for offensive or defensive purposes, in which case they shall each man receive two dollars per diem for the time actually in service under such call. Such organization shall consist of not more than one regiment, which shall be comprised of not more than ten companies, each company to consist of not less than fifty nor more than one hundred men. Such organization shall be entitled to their fair share of the federal appropriation of 1808, provided for such militia organization throughout the states and territories. The governor shall issue to each man in such militia organization, in case of service under his call, a certificate for the amount due for such service, and may recommend an appropriation by the territorial legislature for the payment of such certificates. [S. L. 1882, ch. 69, § 1.]

TITLE 30. MINES AND MINING.

CHAPTER 1. LODE AND PLACER CLAIMS.
CHAPTER 2. COAL MINES.

CHAPTER 1.

LODE AND PLACER CLAIMS.

SECTION.
1617. Copies of mining records to be filed in register's office
1618. Duty of district recorder.
1619. Length of mining claim.
1620. Width of claim.
1621. Location certificate of mineral lode.
1622. When location certificate void.
1623. Manner of desigating location of claim.
1624. Substitute for discovery shaft.
1625. Time for sinking shaft.
1626. What a claim shall include.
1627. Location certificate of placer claim.
1628. Expenditures necessary to hold placer claims.
SECTION.
1629. Use of water for mining.
1630. Rights of way for ditches, etc.
1631. Surface owners entitled to security.
1632. Additional location certificate, when may be filed.
1633. Re-location of abandoned claim.
1634. Location certificate to contain but one claim.
1635. Intimidating owners of mines—Penalty.
1636. Malicious destruction of mining property—Penalty.
1637. Mining swindles declared felonies.
1638. Stock guards to be placed about shafts.
1639. Coal mines excepted.

Copies of mining records to be filed in register's office.

SEC. 1617. A copy of all the records, laws and proceedings of each mining district shall be filed in the office of the register of deeds of the county in which the district is situated, within the boundaries attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters concerned in such record or proceeding; and all such records of deeds and conveyances, laws and proceedings of any mining district heretofore filed in the register's office of the proper county, and transcripts thereof duly certified, whether such record relate to gulch claims, lode claims, building lots, or other real estate, shall have the like effect in evidence. Such copies of records, laws and proceedings shall be filed in the office of the said register of deeds by the recorder of each mining district within thirty days after the organization of each new mining district, and there shall be filed in the office of the said register of deeds by the said recorder, during the first week of each month complete copies of all the records, laws and proceedings made, enacted and had in each mining district during the preceding month. [S. L. 1879, ch. 57, § 1. S. L. 1882, ch. 71, § 1.]

Duty of district recorder.

SEC. 1618. It shall be the duty of the recorder of each mining district to file copies as above provided, and reasonable fees therefor may be provided by the several mining districts. [S. L. 1879, ch. 57, § 2.]

Length of mining claim.

SEC. 1619. The length of any lode mining claim located within this territory, shall not exceed fifteen hundred feet along such lode or vein. [S. L. 1886, ch. 115, § 1.]

Width of claim.

SEC. 1620. The width of any lode claim located in this territory shall not exceed three hundred feet on each side of such lode, veins or crevices; the measurement thereof to extend from the center of the discovery shaft of such lode, vein or crevice. [S. L. 1886, ch. 115, § 2.]

Location certificate of mineral lode.

SEC. 1621. A discoverer of any mineral lode shall, within three months from the date of such discovery, record his claim in the office of the register of deeds of the county in which such mineral claim is situated, by a "location certificate," which shall contain:

First—The name of the lode claim;

Second—The name of the locator;

Third—The date of the location;

Fourth—The dimensions, in feet, claimed on each side of the discovery shaft;

Fifth—The general course of the lode, as near as known. [S. L. 1886, ch. 115, § 3.]

When location certificate void.

SEC. 1622. Any certificate of the location of a lode claim which shall not fully contain all the requirements named in the preceding section, together with such other description as shall identify the lode or claim with reasonable certainty, shall be void. [S. L. 1886, ch. 115, § 4.]

Manner of designating location of claims.

SEC. 1623. Before the filing of a location certificate the discoverer of any lode, vein or fissure, shall designate the location thereof, as follows:

First—By sinking a shaft upon the discovered lode or fissure to the depth of ten feet from the lowest part of the rim of such shaft at the surface;

Second—By posting at the point of discovery, on the surface, a plain sign or notice, containing the name of the lode or claim, the name of the discoverer and locator, and the date of such discovery;

Third—By making the surface boundaries of the claim, which shall be marked by six substantial posts hewed or marked on the side or sides which face in toward the claim and sunk in the ground, one at each corner and one at the center of each side line. Where bed-rock renders it impossible to thus sink such stakes, they may be placed within a pile of stones; and when thus making the boundaries of a claim, if any one or more of such posts shall fall, by necessity upon precipitous ground, when the proper placing of it is impractical or dangerous to life or limb, it shall be lawful to place any such post at the nearest point, properly marked to designate its right place; *Provided*, That no right to such lode or claim, or its possession and enjoyment, shall be given to any person or persons unless such person or persons shall discover in said shaft mineral bearing rock in place. [S. L. 1886, ch. 115, § 5.]

Substitutes for discovery shaft.

SEC. 1624. Any open cut, or cross-cut, or tunnel, which shall cut a lode at the depth of ten feet at least below the surface, shall hold such lode the same as if a discovery shaft were sunk thereon, or an adit of not less than ten feet along the lode from the point where such lode may be in any manner discovered, shall be equivalent to a discovery shaft [S. L. 1886, ch. 115, § 6.]

Time for sinking shaft.

SEC. 1625. The discoverer of any mineral lode or vein in this territory shall have the period of ninety days from the date of discovering such lode or vein in which to sink a shaft thereon. [S. L. 1886, ch. 115, § 7.]

What a claim shall include.

SEC. 1626. The location of any lode claim or location certificate thereof shall be construed to include all surface ground within the surface limits thereof and all lodes and ledges throughout their entire depth, the upper limit of which lie within the defined surface lines of such claim, extended downward vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim but shall not include any portion of such lode or ledges beyond the end lines of the claim or beyond the side lines of the claim in any other manner than by the dip of the lode or ledge. If the upper limit or top of a lode in its longitudinal course extend beyond the exterior end lines of the claim at any point on the surface, or as extended vertically downward, such lode shall not be followed in its longitudinal course beyond the point where it is intersected by the end lines. [S. L. 1886, ch. 115, § 8.]

Location certificate of placer claim.

SEC. 1627. The discoverer of any placer claim shall, within ninety days from the date of such discovery, record such claim in the office of the register of deeds of the county within which such claim may exist, by a location certificate which shall contain the following facts:

First The name of the claim, designating it as a placer claim;

Second The name or names of the locator or locators thereof;

Third The date of such location;

Fourth The number of feet or acres thus claimed;

Fifth A description of the claim by such designation of natural or fixed monuments as shall identify the claim beyond question; *Provided*, That if the United States survey has been extended over said lands, then the claim or claims shall be taken by legal sub-division, and no other monuments shall be required than the United States corners. Before filing such location certificate the discoverer shall locate his claim:

1. By securely fixing upon such claim a notice in plain painted, printed or writen letters containing the name of the claim, the name of the locator, the date of the discovery of such claim and the number of feet or acres thus claimed;

2. By designating the surface boundaries by substantial posts, one at each corner of the claim. In localities where timber cannot be found, or where such corners or angles are of rocky surface, such monuments may consist of mounds of stone three feet high and three feet at the base. [S. L. 1886, ch. 115, § 9.]

Expenditures necessary to hold placer claims.

SEC. 1628. On every placer claim of one hundred and sixty acres, heretofore or hereafter located in this territory, not less than one hundred dollars worth of manual labor shall be performed, or permanent improvements made thereon to the same amount, by the thirty-first day of December each year from the first day of January after such location is made, until a patent shall have been issued therefor. On all placer claims containing less than twenty acres the expeinditure thereon each and every successive year shall not be less than fifteen dollars; but when two or more placer claims lie contiguous and are owned by the same person or persons, or corporation, the yearly expenditure of labor and improvements required on each of said claims may be made on any one of such contiguous claims, if the owner or owners shall thus prefer; but upon a failure to comply with these conditions within the time above required such claim or claims shall thereafter be open to relocation on and after the first day of January of any year after such labor or improvements were due, in the same manner and on the same terms as if no location thereof had ever been made; *Provided*, That the original locators, their heirs, assigns or legal representatives have not resumed work upon such claim or claims after failure, and before any subsequent location has been made; *And, provided further*, That the aforesaid expenditure required to be made upon such claim or claims may be made in buildings, ditches to conduct water upon or from such claim or claims, or in making other mining improvements thereon necessary for the working of such mining claim or claims. Upon the failure of any one or more of several joint owners of any mining claim in this territory to do and perform his or their proportion of the assessment labor, or make the improvements required by this chapter upon his or their mining claim or claims within the time herein required, shall forfeit his or their right therein, and their joint or co-owners, who may have performed such assessment of labor, or made such required improvements on such claim or claims within the time required, to-wit: Within the year after the thirty-first day of December after such location was duly made, and for each succeeding year, so long as such labor and improvements shall be due under the provisions of this chapter, may succeed to the forfeited right and interest of delinquent joint owners, by giving them personal notice in writing, or if they be non-residents of the territory, such notice shall be by publication in a newspaper issued nearest to such claim, once a week for ninety successive days, and by mailing each of such delinquent joint owner or owners, a copy of the newspaper containing such notice, if his or their address be known; and if after the expiration of ninety days from the day of personal notice, or from the first newspaper publication aforesaid, such delinquent or delinquents, should fail or refuse to contribute his or their proportion of assessment labor or improvements due, or a money equivalent therefor, his or their interest in such claim or claims, shall become the property of his or their joint or co-owners, who shall have made the expenditure required under this chapter. In all such cases a copy of the last advertisement with the affidavit of the editor, testifying to said advertisement, shall be recorded in the office of the register of deeds when such locations occur. [S. L. 1886, ch. 115, § 10.]

Use of water for mining.

SEC. 1629. Whenever any person, persons or corporation shall be engaged in mining or milling in this territory, and in the prosecution of such business, shall hoist or bring water from mines or natural water courses, such person, persons or corporation shall have the right to use such water in such manner, and direct it into such natural course or gulch as their business interests may require; *Provided*, That such diversion shall not infringe on vested rights. The provisions of this section shall not be construed to apply to new or undeveloped mines, but to those only which shall have been opened and require drainage or other direction of water. [S. L. 1886, ch. 115, § 11.]

Right of way for ditches, etc.

SEC. 1630. All mining claims or property now located, or which may hereafter be located within this territory, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway, pack-trail or wagon road, whether now in use or which may hereafter be laid out across any such location, claim or property; *Provided always*, That such right of way shall not be exercised against any mining location, claim or property duly made and recorded as herein required, and not abandoned prior to the establishment of any such ditch, flume, tramway, pack-trail or wagon road, without the consent of the owner or owners, except in condemnation, as in the case of land taken for public highways. Consent to the location of the easements above enumerated over any mineral claim, location or property shall be in writing; *And, provided further*, That any such ditch or flume shall be so constructed that water therefrom shall not injure vested rights by flooding or otherwise. [S. L. 1886, ch. 115, § 12.]

Surface owners entitled to security.

SEC. 1631. Where a mining right exists in any case, and is separate from the ownership or right of occupany to the surface, such owner or rightful occupant of the said surface may demand satisfactory security from the miner or miners, and if such security is refused, such owner or occupant of the surface may enjoin the miner or miners from working such mine until such security is given. The order for such injunction shall fix the amount of the bond therefor. [S. L. 1886, ch. 115, § 13.]

Additional location certificate, when may be filed.

SEC. 1632. Whenever it shall be apprehended by the locator, or his assigns, of any mining claims or property heretofore or hereafter located, that his or their original location certificate was defective, erroneous, or that the requirements of the law had not been complied with before the filing thereof; or shall be desirous of changing the surface boundaries of his or their original claim or location; or of taking in any part of an over-lapping claim or location which has been abandoned; or in case the original certificate was made prior to the approval of this chapter, and he or they shall be desirous of securing the benefit of this law, such locator or locators, or his or their assigns, may file an additional location certificate in compliance with and subject to this chapter; *Provided however*, That such re-location does not infringe upon the rights of others existing at the time of such re-location, and that no such re-location, or other record thereof, shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under the previous location. [S. L. 1886, ch. 115, § 14.]

Relocation of abandoned claim.

SEC. 1633. Any abandoned lode vein or strata claim may be relocated, and such relocation shall be perfected by sinking a new discovery shaft and by fixing new boundaries in the same manner, as provided for the location of a new claim; or the relocator may sink the original discovery shaft ten feet deeper than it was at the time of its abandonment, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either event, a new location stake shall be fixed. The location certificate of an abandoned claim may state that the whole or any part of the new location is located as an abandoned claim. [S. L. 1886, ch. 115, § 15.]

Location certificate to contain but one claim.

SEC. 1634. No location certificate shall contain more than one claim or location, whether the location be made by one or more locators; and any location certificate that contains upon its face more than one location claim, shall be absolutely void, except as to the first location named and described therein; and in case more than one claim or location is described together so that the first one cannot be distinguished from the others, the certificate of location shall be void as an entirety. [S. L. 1886, ch. 115, § 16.]

Intimidating owners of mines—Penalty.

SEC. 1635. In all cases when two or more persons shall, through collusion or otherwise, associate themselves together for the purpose of obtaining the possession of any lode, gulch, placer or other mineral claim or mining property within this territory, then in the actual possession of another or others, by force and violence, or threats of violence or by stealth, and shall proceed to carry out such purpose by making threats to and against the party or parties in possession; or who shall enter upon such lode, gulch, placer or other mineral claim or mining property for the purposes aforesaid; or who shall enter upon or into any lode, quartz mill, placer claim, gulch, or other mineral claim or mining property; or, not being on such mining claim or mineral property, but within hearing of the same, shall make any threats, or make use of any language, signs or gestures calculated to intimidate any person or persons in possession or at work on the said claim or claims of mineral property of whatever kind or nature, from continuing such possession or work thereon or therein; or to intimidate others from engaging to be employed thereon or therein, every such person or person so engaging, shall be guilty of a misdemeanor; and, upon conviction thereof, shall be fined in a penal sum not exceeding two hundred and fifty dollars, and be imprisoned in the county jail for not less than thirty days, nor more than six months; such fine to be discharged either by money payment, or by confinement in said county jail until the same is paid at the rate of two dollars and fifty cents per day. On trial of any person or persons charged with any of the offenses enumerated in this section, the proof of a common purpose of two or more persons to unlawfully secure possession of any mining claim or mineral property within this territory, or to intimidate any one in possession of, or laborers at work on any mining claim or mineral property aforesaid, accompanied or followed by any acts or utterances of such person or persons, as herein enumerated, shall be sufficient evidence to convict any one committing such acts, although such parties may not be associated or acting together at the time of the commission of such offenses. [S. L. 1886, ch. 115, § 17.]

Malicious destruction of mining property—Penalty.

SEC. 1636. Any persons or persons, who shall unlawfully cut down, break down, level, demolish, destroy, injure, remove, or carry away any sign, notice, post, mark, monument, or fence upon or around, any shaft, pit, hole, incline, or tunnel, or any building, structure, machinery, implements, or other property, on any mining claim or mineral property, ground or premises, upon any of the public lands of this territory, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined a penal sum of money not less than fifty dollars, nor more than one thousand dollars, or be imprisoned for not less than thirty days, nor more than one year; or by both fine and imprisonment, in the discretion of the court. [S. L. 1886, ch. 115, § 18.]

Mining swindles declared felonies.

SEC. 1637. Any person, or persons, who shall defraud, cheat, swindle, or deceive any party, or parties, in relation to any mine, or mining property, by "salting," or by placing or causing to be placed in any lode, placer, or other mine, any genuine metals or material representing genuine minerals, which are designed to cheat and deceive others, for the purpose of gain, whereby others shall be deceived and injured by such, or any other deceptive methods, shall be guilty of a felony, and upon conviction thereof, shall be fined in a penal sum of not less than fifty dollars, and not more than five thousand dollars; or imprisonment in a penitentiary for not less than thirty days, nor more than three years, or both fine and imprisonment, in the discretion of the court. [S. L. 1886, ch. 115, § 19.]

Stock guards to be placed about shafts.

SEC. 1638. Every person, persons, company or corporation, who has already sunk mining shafts, pits, holes or inclines in any mining claim, or on any mineral property, ground or premises, upon any of the public lands of this territory, or who may hereafter sink such openings aforesaid, shall forthwith secure such shafts and openings against the injury or destruction of live stock running at large upon the public domain, by securely covering such shafts and other openings as aforesaid, in a manner to render them safe against the possibility of live stock falling into them, or in any manner becoming injured or destroyed thereby; or by forthwith making a strong, secure, and ample fence around such shafts and other openings aforesaid. Any person, persons, company or corporation that shall fail or refuse to fully comply with the provisions of this section, shall be guilty of a misdemeanor, and on conviction thereof shall be liable for any damages sustained by injury, or loss of live stock thereby; and shall also be fined in a penal sum of not less than twenty-five dollars, nor more than one hundred dollars. [S. L. 1886, ch. 115, § 20.]

Coal mines excepted.

SEC. 1639. Nothing in this chapter shall apply to the workings of coal mines. [S. L. 1886, ch. 115, § 21.]

CHAPTER 2.

COAL MINES.

SECTION.
1640. Map of mines and essentials thereof.
1641. Openings to be maintained in mines.
1642. Care and condition of openings.
1643. Ventilation regulations.
1644. Brushing fire damp.
1645. Mining boss, duties and powers of—Safety regulations.
1646. Negligence of miner—Penalty—Traveling way.
1647. Inspector of coal mines—Appointment and compensation.
1648. Bond and duties of inspector.
1649. Inspectors' powers—Further duties.
1650. Accidents in mines—Coroner's inquest.
SECTION.
1651. Procedure when inspector neglects duty.
1652. Appeals from decision of inspector.
1653. Mining board—Examination of mining bosses—Certificate—Penalty for employing boss without certificate.
1654. Boys and women not to work in mines.
1655 Civil liability incurred by violating this chapter.
1656. Stretchers to be kept at mouth of mine.
1657. Report of territorial inspector.
1658. Annual reports to inspector.
1659. Penalties for violating this chapter.
1660. Small mines not affected.

Map of mines and essentials thereof.

SEC. 1640. The owner, operator or superintendent of every coal mine shall make or cause to be made an accurate map or plan of such coal mine, on a scale not exceeding two hundred feet to the inch; which map or plan shall exhibit all the openings or excavations, the shafts, tunnels, slopes, planes, gangways, entries, cross-headings, rooms, etc., and shall show the direction of the air currents therein, and shall accurately delineate the boundary line between said mine and adjoining mines, and show its relation and proximity thereto. The said map or plan, or a true copy thereof, shall be kept at such mine by the said owner, operator or superintendent, for the use of the territorial inspector of coal mines, and for the inspection of any miner working in said mine, whenever said miner shall have cause to fear that the place where he is working is becoming dangerous by reason of its proximity to other workings, which may be supposed to contain water or dangerous gases. The said owner, operator or superintendent shall as often as once in every six months accurately place or cause to be placed on a map or plan of said coal mine, a plan of the excavations made of all the working places or other parts of such coal mine during the preceding six months, and whenever the workings or excavations of said coal mine, or any part of the same have been driven to within ten feet of the boundary line, or when said coal mine or any part of the same is abandoned, the owner, operator or superintendent thereof, shall furnish the territorial inspector of coal mines, within three months thereafter, the proximity to the boundary line as aforesaid, or after abandonment of the said mine, or any part of the same with a correct copy on tracing muslin or blue print of the map or plan of said mine, which shall accurately show all excavations and workings of such mines to date, exhibiting clearly the part or parts abandoned, and the part or parts in proximity to the boundary line aforesaid. The several coal maps or plans of mines in the territory which are furnished to the territorial inspector of coal mines, as last aforesaid, shall be the property of the territory, and shall remain in the care of the said territorial inspector of coal mines, to be transferred by him to his successor in office, and in no case shall any copy of the same be made without the consent of the owner, operator or his agent. If the said territorial inspector of coal mines shall find or have good reasons to believe that any map or plan of any coal mine made or furnished in pursuance of the provisions of this chapter is materially inaccurate or imperfect, he is hereby authorized to cause a correct plan or map of said coal mine to be made at the expense of the owner or operator thereof, the cost of which shall be recoverable from the said owner or operator, in the name of the territory, as other debts are recoverable by law; *Provided, however*, That if the map or plan which is claimed to be inaccurate shall prove to have been correct, then the territory shall be held liable for the expenses incurred in making such test survey, and the same shall be paid by the territorial treasurer upon a warrant of the territorial auditor, who shall require proper vouchers and satisfactory proof of the same. [S. L. 1886, ch. 24, § 1.]

Openings to be maintained in mines.

Sec. 1641. It shall not be lawful for the owner, operator, contractor, lessee or agent of any coal mine or for any firm, company, corporation or association, their clerks, servants, agents or employes to employ any person at work within any coal mine or permit any person to be in any coal mine for the purpose of working therein, unless such mine is in communication with at least two openings, if the mine be worked by shaft or slope, which two shafts or slopes shall be separated by natural strata at all points by a distance of not less than fifty feet, except in drift mines heretofore opened, where the mine inspector shall deem it impracticable; *Provided*, *however*, An aggregate number not exceeding twenty persons may be employed in the mine at any one time until the second opening shall be reached and made available, which said second opening the said inspector of coal mines shall cause to be made without unnecessary delay, and in case of furnace ventilation being used before the second opening is reached, the furnace shall not be placed within forty feet of the foot of the shaft, slope or drift, and shall be well secured from danger from fire by brick or stone walls of sufficient thickness. [S. L. 1886, ch. 24, § 2.]

Care and condition of openings.

Sec. 1642. When a second opening or outlet is made which does not exceed seventy-five feet in vertical depth from the surface to the seam or strata of coal that is being mined, it shall be set apart exclusively for the purpose of ingress and egress to or from the mine by any person or persons employed therein, and it shall always be kept clear of any obstruction, and if the opening is a shaft it shall be so fitted with safe and convenient stairs not less than two feet wide, and not to exceed an angle of sixty degrees descent and landings of not less than eighteen inches wide and four feet long, at easy and convenient distances, and all water coming from the surface or out of the strata in the shaft, shall be so conducted as to be prevented from falling down the shaft on the stairs or on persons ascending or descending the stairway of the shaft. If the second opening is a slope for a traveling way and has a greater angle of descent than twenty-five degrees, it shall be provided with suitable stairs not less than two feet wide, but when the seam or stratum of coal at main outlet or escapement shaft in connection with any mine exceeds seventy-five feet in vertical depth from the surface, the miners or other employes in the mine shall be lowered into or raised from said mine by machinery, and when the employes are lowered into or raised from said mine at the main outlet, the escapement shall be fitted with safe and available machinery or safe and convenient stairs by which persons employed in the mines may readily escape in case of accident. The hoisting machinery and stairs used for lowering or raising the employes into or out of the mine shall be kept in a safe condition and inspected once each twenty-four hours by a competent person employed in whole or in part for that purpose, and such machinery and the method of its inspection shall be approved by the territorial inspector of coal mines. [S. L. 1886, ch. 24, § 3.]

Ventilation regulations.

Sec. 1643. The owner or agent of any coal mine, whether shaft, slope or drift, shall provide and maintain for every such mine, ample means of ventilation, affording not less than one hundred cubic feet per minute for each and every person employed in said mine, and as much more as the circumstances may require, which shall be circulated around the main headings and cross headings and working places to an extent that will dilute, carry off and render harmless the noxious or dangerous gases generated therein, and all mines generating fire-damp shall be kept free of standing gas in the worked out or abandoned parts of the same, and the entrance thereto shall be properly closed, and cautionary notice shall be posted to warn persons of danger, and every working place and all other places where gas is known or supposed to exist, shall be carefully examined by the fire-boss, within three hours immediately before each shift, with a safety lamp, and in making said examination it shall be the duty of the fire-boss, at each examination, to leave at the face of every place examined, evidence of his presence, and it shall not be lawful for any miner to enter any mine or part of a mine generating fire-damp until it has been examined by the fire-boss aforesaid, and by him reported to be safe. [S. L. 1886, ch. 24, § 4.]

Brushing fire-damp.

SEC. 1644. It shall be unlawful for any miner, fire-boss, employe in any mine, or other person, to brush fire-damp from any place in a coal mine by means of a coat, sack, sail cloth, or any like article or material; and any person so offending shall be deemed guilty of a misdemeanor, and upon conviction, shall be imprisoned for a term not exceeding six months, and fined in any sum not to exceed one hundred dollars, or punished by such both fine and imprisonment. And any owner or superintendent, mine boss or fire-boss, who shall knowingly permit the same to be done, shall be deemed guilty of a misdemeanor, subject to the same penalties as hereinbefore prescribed. [S. L. 1886, ch. 24, § 5.]

Mining boss, duties and powers of—Safety regulations.

SEC. 1645. In order to better secure the proper ventilation of every coal mine and promote the health and safety of the persons employed therein, the owner or agent shall employ a competent and practical inside overseer, to be called mining boss, who shall be an experienced coal miner, and who shall keep a careful watch over the ventilating apparatus and the airways, traveling ways, pumps and drainage, and shall see that as the miners advance their excavations all loose coal, slate and rock overhead are carefully secured against falling on the traveling ways, and that sufficient props, caps and timbers are furnished upon order of the miner, of suitable size and cut square at both ends, and as near as practicable to a proper length for the places where they are to be used, and such props, caps or timbers shall be delivered at the mouth of the rooms, and shall see that all water be drained or hauled out of all working places before the miner enters, and as far as practicable kept dry while the miner is at work; and it shall be the further duty of the mining boss to see that the proper cut-throughs are made in the room pillars of the miners' places at intervals of not more than sixteen yards for the purpose of ventilation, and in all hauling roads, holes for shelter shall be made at every thirty yards, and be kept whitewashed, when a space two feet and six inches between the wagon and rib shall be deemed sufficient for shelter, and the mining boss shall measure the air current at least once a week at the inlet and outlet and at or near the face of the headings. He shall keep a record of such measurements, which shall be placed by him in a book kept for that purpose, said book to be open for the examination of the said territorial inspector; he shall also, on or about the fifteenth day of each month, mail to the territorial inspector of coal mines a true copy of the air measurements given, stating also the number of persons employed in or about said mine, the number of mules and horses used, and the number of days worked in each month, for which purpose blanks shall be furnished by the said inspector. It shall be the further duty of the mining boss to immediately notify the owner or agent of the mine of his inability to comply with the provisions of this section. It shall then become the duty of the said superintendent, operator, owner or agent, at once to attend to the matter complained of by the mining boss, and to comply with the provisions hereof. The safety lamps used for examining mines, or which may be used in working therein, shall be furnished by and be the property of the owner of said mine, and shall be in charge of the agent of such mine, and in all mines the doors used in assisting or directing the ventilation of the mine shall be so hung and adjusted that they will close themselves, or be supplied with springs or pulleys so that they cannot be left standing open, and bore holes shall be kept not less than twelve feet in advance of the face of every working place, and when necessary on the sides of the same when they are being driven towards and in dangerous proximity to an abandoned mine or part of a mine, suspected of containing inflammable gases, or which is inundated with water. The mining boss or his assistant shall visit and examine every working place in the mine at least once every alternate day, while the miners of such place are or should be at work, and shall direct that each and every working place is properly secured by props or timber, and that safety in all respects is assured, and that no person shall be permitted to work in an unsafe place, unless it be for the purpose of making it safe. All owners and operators of coal mines shall keep posted in a conspicuous place about their mine printed rules, submitted to and approved by the territorial inspector, defining the duties of all persons employed in or about said coal mines, which said notices shall be printed in the language or languages used by the miners working therein. [S. L. 1886, ch. 24, § 6.]

Negligence of miner—Penalty—Traveling way.

Sec. 1646. Any miner, workman, or other person who shall intentionally injure any shaft, lamp, instrument, air course or brattise, or obstruct or throw open air ways, or carry lighted pipes or matches into places that are worked by safety lamps, or handle or disturb any part of the machinery, or open a door and not close it again, or enter any place of the mine against caution, or disobey any order given in carrying out the provisions of this chapter, or do any other act, whereby the lives or the health of persons or security of the mines or machinery is endangered, shall be deemed guilty of a misdemeanor, and may be punished in a manner provided in section sixteen hundred and fifty-nine. All machinery about mines shall be properly fenced off, and there shall be cut in the side of every hoisting shaft, at the bottom thereof, a traveling way sufficiently wide and high to enable persons to pass the shaft in going from one side of the mine to the other, without passing over or under the cage or other hoisting apparatus. [S. L. 1886, ch. 24, § 7.]

Inspector of coal mines—Appointment and compensation.

Sec. 1647. The governor shall nominate, and by and with the consent of the council appoint, during the present session of the legislative assembly, and every two years thereafter, a territorial inspector of coal mines, who shall hold his office for two years, and until his successor is duly appointed and qualified, who shall be a man having a thorough knowledge of practical mining and mining engineering, and who shall not be an employe, owner or part owner in any coal mine in the territory. He shall not be less than thirty years of age, a citizen of the United States, and if practicable, of this territory, of good repute and temperate habits. The said territorial inspector of coal mines shall receive an annual salary of two thousand five hundred dollars, and actual traveling expenses while in the discharge of his duties, to be paid quarterly by the territorial treasurer, upon warrants of the auditor, and shall make his residence and keep his office as near as practicable to the mines under his jurisdiction. Said inspector is hereby authorized to procure such instruments and chemical tests and stationery, and to incur such expense of communication from time to time as may be necessary to the discharge of his duties, at the cost of the territory, subject to the approval of the governor of the territory, which shall be paid out of the territorial treasury, upon accounts duly certified by him and audited by the auditor. All instruments, plans, books, memoranda, notes and other property pertaining to the office hereby created shall be the property of the territory, and shall be delivered by each inspector to his successor in office, and said inspector shall be allowed all expenses necessarily incurred in enforcing the provisions of this chapter in the courts of the territory, when such expenses are certified to be correct by the courts before which the proceedings were had. [S. L. 1886, ch. 24, § 8.]

Bond and duties of inspector.

SEC. 1648. The territorial inspector of coal mines shall, before entering upon the discharge of his duties, give bond in the sum of ten thousand dollars to the Territory of Wyoming in the penal sum of ten thousand dollars, with sufficient sureties, to be approved by the chief justice of the supreme court of the territory, said bond to be filed in the office of the territorial auditor, which bond shall be conditioned for the faithful discharge of his duties, and he shall take and subscribe an oath or affirmation to discharge his duties impartially and with fidelity to the best of his knowledge and ability. The said inspector shall devote the whole of his time to the duties of his office; it shall be his duty to examine the coal mines of the territory as often as possible, which shall not be less than once in three months, and report the number of times he has visited each mine in a year, to see that all the provisions of this chapter are observed and strictly carried out; and he shall make records of all examinations of mines, showing the condition in which he finds them, especially in reference to ventilation and drainage, the number of mines in the territory, the number of persons employed in each mine, the extent to which the laws are obeyed, the progress made in the improvement sought to be secured by the passage of this chapter, the number of accidents and deaths resulting from injuries received in or about the mine, with cause of such accident or death, said report to be made quarterly, and published in at least one paper in each county in which any coal mines are located, at least one time. [S. L. 1886, ch. 24, § 9.]

Inspector's powers--Further duties.

SEC. 1649. The territorial inspector of coal mines shall have the right at all times to enter any coal mine to make examinations or obtain information, and the owner or superintendent shall afford any assistance, necessary to the said inspector in making such examination. The said inspector shall notify the owner, lessee, superintendent or mining boss, immediately of the discovery of any violation of this chapter, and of the penalty imposed thereby for such violation, and in case of such notice being disregarded for the space of five days, he shall institute proceedings against the owner, agent, lessee or mining boss, under the provisions of section sixteen hundred and fifty-nine; in case, however, where, in the judgment of the said inspector, delay may jeopardize life or limb, he may at once enter proceedings (except the defects be remedied) to restrain working of the mine; and the cost of said proceedings, including the charge of the attorney prosecuting the same, shall be borne by the owner, lessee or superintendent, against whom such proceedings are had; *Provided*, That no attorney fee exceeding the sum of fifty dollars shall be taxed in any one case for the prosecution of such case; *And provided further*, That if the court shall find the cause not sufficient, then the case shall be dismissed and the costs be borne by the territory. [S. L. 1886, ch. 24, § 10.]

Accidents in mines—Coroner's inquest.

SEC. 1650. Whenever by reason of any explosion or any other accident in any coal mine or the machinery connected therewith, loss of life or serious personal injury shall occur, it shall be the duty of the person having charge of such mine or colliery to give a notice thereof forthwith to the said territorial inspector, and if any person is killed thereby to the coroner of the county, who shall give due notice of the inquest to be held. If the coroner shall determine to hold an inquest, the inspector shall be allowed to testify, and offer such testimony as he shall deem necessary to thoroughly inform the said inquest of the causes of the death, and the said inspector shall have authority at any time to appear before said coroner and jury and question or cross-question any witness, and in choosing a jury for the purpose of holding such inquest, it shall be the duty of the coroner to empanel at least three experienced miners on such jury. It shall be the duty of the said inspector, upon being notified as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the future safety of the men, and if the results of the explosion or accident do not require an investigation by the coroner, he shall proceed to investigate and ascertain the cause of the explosion or accident and make a record thereof, which he shall file as provided for, and to enable him to make the investigation he shall have the power to compel the attendance of persons to testify, and to administer oaths or affirmations; the cost of such investigations shall be paid by the county in which the accident occurred, in the same manner as costs of coroner's inquests are paid by law. [S. L. 1886, ch. 24, § 11.]

Procedure when inspector neglects duty.

SEC. 1651. The district court within the proper county, or judge thereof in vacation or recess, upon a petition signed by not less than fifteen reputable citizens, who shall be miners, owners or lessees of mines, and with the affidavit of one or more of said petitioners attached, setting forth that the territorial inspector of coal mines neglects his duty or is incompetent, or that he is guilty of malfeasance in office, shall issue a citation in the name of the territory to the said inspector, to appear upon a day to be therein fixed and stated before said court, which notice shall be served at least fifteen days before the time fixed to appear, at which time the court or judge thereof, in vacation or recess, shall proceed to inquire into and investigate the allegations of the petitioners, and if the court find that said inspector is neglectful of his duties, or is incompetent to perform the duties of his office, or if he is guilty of malfeasance therein, the court or judge shall certify the same to the governor, who shall thereupon declare the office of said inspector vacant, and proceed to supply said vacancy by appointment; and all vacancies in said office shall be filled by appointment by the governor; the cost of said investigation shall, if the charges are sustained, be taxed against the inspector, but if the charges be not sustained, they shall be taxed against the petitioners. [S. L. 1886, ch. 24, § 12.]

Appeals from decision of inspector.

SEC. 1652. The inspector shall exercise his sound discretion in the enforcement of the provisions of this chapter, and if the operator, owner or miners shall not be satisfied with any decision of the inspector rendered in the discharge of his duties under this chapter, which said decision shall be in writing, and signed by said inspector, the said owner, operator, miner or miners may, within fifteen days after such decision is rendered, appeal to the district court of the county in which the mine concerned is located, and said court shall speedily determine the point involved in said decision and appeal, which said decision shall be binding and conclusive, subject only to an appeal to the supreme court of the territory. The court, in its discretion, may appoint three practical, competent and disinterested persons, whose duty it shall be, under instructions of the said court, to forthwith examine such mine and make report under oath of the facts as they exist or may have been, together with their opinion thereon, which report of said board shall become absolute, unless exceptions thereto shall be filed within ten days after the notice of the filing thereof, to the owner, operator, miner or miners, or inspector, and if exceptions be filed, the court shall at once hear and determine the same, and the decision shall be final and conclusive, subject only to appeal as aforesaid. If the court shall finally sustain the decision of the inspector, then the appellants shall pay all costs of such proceedings, and if the court shall not sustain the decision of the inspector, then such costs shall be paid by the county or by the appellants and county in such proportion as the court shall determine. That no appeal from any decision made by any inspector shall work as a supersedeas during the pendency of such appeal, but all such decision shall be in full force until reversed or modified by the court. [S. L. 1886, ch. 24, § 13.]

Mining board—Examination of mining bosses—Certificate—Penalty for employing boss without certificate.

SEC. 1653. On the petition of the mining inspector the district court in any county in this territory shall appoint an examining board for such county, consisting of the territorial inspector of coal mines, an operator of a coal mine and a coal miner, who shall be citizens of the United States, and the latter two of which board shall have at least five years of experience in the mines of the territory, whose duty it shall be to examine any person applying thereto as to his competency and qualifications to discharge the duties of mining boss. Said board of examiners shall meet at the call of the inspector and they shall grant certificates to all persons whose examination shall disclose their fitness for the duties of mining boss, and such certificate shall be sufficient evidence of the competency and qualification of the holders for the duties of said office; *Provided*, That any person who shall have been employed as a miner at least five years in the coal mines of Wyoming and as mining boss continuously by the same person or firm or corporation for the period of one year preceding the twenty-fifth day of February, eighteen hundred and eighty-six, may be entitled, if in the judgment of the inspector he be qualified, to a certificate without undergoing such examination; but he shall not be employed by any other person or firm or corporation without having undergone such examination. The members of the examining board, other than the inspector, shall hold their office for the period of two years from the date of their appointment and shall receive five dollars per day for each day necessarily and actually employed, and mileage at the rate of fifteen cents per mile for each mile necessarily traveled, to be paid by the territory. Vacancies in the membership of the board shall be filled by the court of the proper county, except the vacancy in the office of inspector. Sessions of the examining board shall not exceed three days in each quarter, and for any certificate granted the board shall receive the sum of one dollar, the same to be paid into the territorial treasury. No person shall act as fire boss unless granted a certificate of competency by the territorial inspector of coal mines. No owner, operator, contractor, lessee or agent shall employ any mining boss or fire boss who does not have the certificate of competency required. Said certificate shall be posted up in the office of the mine, and if any accident shall occur in any mine in which a mining boss or fire boss shall be employed who has no certificate of competency, as required by this chapter, by which any miner shall be killed or injured, he or his estate shall have a right of action against such operator, owner, lessee or agent, and shall recover the full damages sustained; in case of death, such action to be brought by the administrator of his estate, within three years from the date of accident, the proceeds recovered to be divided among the heirs of the deceased, according to law. [S. L. 1886, ch. 24, § 14.]

Boys and women not to work in mines.

SEC. 1654. No boy under the age of fourteen years, and no woman or girl of any age shall be employed or permitted to be in or about any coal mine for the purpose of employment therein; *Provided, however*, That this provision shall not affect the employment of a boy or female of suitable age in an office or in the performance of clerical work at such mine or colliery. [S. L. 1886, ch. 24, § 15.]

Civil liabilty incurred by violating this chapter.

SEC. 1655. For any injury to person or property occasioned by any violation of this chapter, or any wilful failure to comply with its provisions, a right of action against the party at fault shall accrue to the party injured for the direct damages sustained thereby, and in any case of loss of life, by reason of such violation or wilful failure, a right of action against the party at fault shall accrue to the administrator of the estate whose life shall be lost, for like recovery of damages for the injuries they shall have sustained; *Provided*, That nothing in this section shall be so construed as to prevent the recovery of any lawful damages against the person or company operating mines if said company should be found in fault or shall have contributed to any accident by means of carelessness on their part; *And, provided further,* That in no case shall the territory be liable for damages under this chapter. [S. L. 1886, ch. 24, § 16.]

Stretchers to be kept at mouth of mine.

SEC. 1656. It shall be the duty of owners, operators, lessees, superintendents and agents of coal mines, to keep at the mouth of the drift, shaft or slope, or at any such other place or places as shall be designated by the inspector, stretchers in such number as the inspector shall designate, properly constructed for the purpose of carrying away any miner or employe working in and about such mine, who may in any way be injured in and about his employment. [S. L. 1886, ch. 24, § 17.]

Report of territorial inspector.

SEC. 1657. It shall be the duty of the territorial inspector of coal mines on each visit to any mines, to make out a written or partly written and partly printed report of the condition in which he finds such mines, and post the same in the office at the mine; the said report shall give the date of visit, the number of visits during the year, the total number of mines in the territory, the number of feet of air in circulation and where measured, and such other information as he shall deem necessary, and the report shall remain posted in the office for one year, and said report may be examined by any miner or person employed in and about such mine. [S. L. 1886, ch. 24, § 18.]

Annual reports to inspector.

SEC. 1658. On or before the thirty-first day of January in each year, the owner, operator or superintendent of every mine or colliery shall send to the territorial inspector a correct report, specifying with respect to the year, ending the thirty-first day of the preceding December, the name of the owner, operator and officers of the mine, and the quantity of coal mined, and the number of men employed; the report shall be in such form and give such information as may be from time to time required and prescribed by the inspector; blank forms for such report shall be furnished by the territory. [S. L. 1886, ch. 24, § 19.]

Penalties for violating this chapter.

SEC. 1659. The neglect or refusal to perform the duties required to be performed by any section of this chapter by the parties therein required to perform them, or the violations of any of the provisions or requirements thereof, shall be deemed a misdemeanor, and shall upon conviction, except wherein otherwise provided, be punished by a fine of not less than two hundred dollars and not exceeding five hundred dollars, at the discretion of the court; *Provided,* That in case the neglect, or failure, or violation occurs in the case of the territorial inspector of coal mines, if such violation, failure or neglect is shown to have been wilful, such punishment shall be by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment not less than six months nor more than one year, or by both such fine and imprisonment; and in default of payment of any fine imposed upon any person under this chapter, such person may be committed to jail until the same shall be paid. [S. L. 1886, ch. 24, § 20.]

Small mines not affected.

SEC. 1660. The provisions of this chapter shall not apply to any mine employing an average of less than ten persons during any one twenty-four hours. [S. L. 1886, ch. 24, § 21.]

TITLE 31. NOTARIES PUBLIC AND COMMISSIONERS.

CHAPTER 1. NOTARIES PUBLIC.
CHAPTER 2. COMMISSIONERS.

CHAPTER 1.

NOTARIES PUBLIC.

SECTION.

1661. Appointment and term of office.
1662. Attesting and recording of commission.
1663. Bond and oath of office.
1664. Legalization of imperfect qualifications.
1665. Official seal and register.
1666. General powers of notaries.
1667. Certificate of notaries as evidence.
1668. Register to contain record of protests.
1669. Action on notarial bond.
1670. Register to be deposited with register of deeds.
1671. Neglect of duty by register of deeds—Penalty.
1672. Defects in notarial seal, disregarded.
1673. When justice and probate judge may protest paper.

Appointment and term of office.

SEC. 1661. The governor shall appoint and commission in each county, as occasion may require, one or more notaries public, who shall hold their offices for two years, unless sooner removed according to law. [C. L. 1876, ch. 88, § 1.]

Attesting and recording of commission.

SEC. 1662. When any person is appointed or commissioned a notary public by the governor, as provided in the preceding section, his commission shall be attested by the secretary of the territory, under the seal thereof, which commission shall be transmitted by the secretary to the register of deeds of the county in which said appointee resides, who shall record the same in a book to be by him kept in his office, for the purpose of recording therein all commissions issued by the governor to officers in his county. [C. L. 1876, ch. 88, § 2.]

Bond and oath of office.

SEC. 1663. Each person so appointed to the office of notary public shall, within thirty days from the time he shall receive notification that his commission has been received by the register of deeds of the county in which the appointee resides, file with said register of deeds in whose office his commission is filed for record, a bond executed by himself and two sureties, to be approved by said register of deeds, which bond shall run to the Territory of Wyoming, in the sum of five hundred dollars, conditioned for the faithful performance of the duties of his office, and shall take and subscribe an oath or affirmation before some officer in the county in which the said appointee resides, authorized to administer oaths or affirmations, that he will support the constitution of the United States and the organic act of this territory, and that he will faithfully and impartially discharge and perform all the duties of his office as notary public, and shall immediately transmit said oath to the said register of deeds, who shall preserve the bond in his office and record the commission and oath in a book to be by him kept for that purpose, and shall send to the secretary of the territory a written notice that the requirements of the law are complied with, which notice shall be preserved by the secretary in his office. [S. L. 1884, ch. 61, § 1.]

Legalization of imperfect qualifications.

SEC. 1664. Every notary public who may have heretofore qualified or taken his oath of office before any officer duly authorized by law to administer oaths, shall be deemed to have qualified according to law, the same as if said oath had been taken before the register of deeds of his county. [S. L. 1884, ch. 61, § 2.]

Official seal and register.

Sec. 1665. Each notary public, before entering upon the duties of his office, shall provide himself with an official seal, with which he shall authenticate all his official acts, upon which seal shall be engraven his name, the words "notary public," and the name of the county wherein he resides, and the word "Wyoming;" and shall also provide himself with an official register, wherein he shall record all his official acts required by law to be recorded, and the seal and register of a notary public shall not be levied or sold. [C. L. 1876, ch. 88, § 4.]

General powers of notaries.

Sec. 1666. Every notary public, so appointed, commissioned and qualified, is hereby authorized and empowered, within the county wherein he resides, and for which he was appointed and commissioned, to administer oaths and affirmations, to take depositions, to receive acknowledgment of deeds, mortgages and powers of attorney and other instruments in writing, to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require; and to exercise such other powers and duties as, by the law of nations and according to commercial usage, may be exercised and performed by notaries public. [C. L. 1876, ch. 88, § 5.]

Certificate of notary as evidence.

Sec. 1667. In all the courts within this territory, the certificate of a notary public over his hand and official seal, shall be received as presumptive evidence of the facts contained in such certificate; *Provided*, That any person interested as a party to a suit may contradict, by other evidence, the certificate of a notary public. [C. L. 1876, ch. 88, § 6.]

Register to contain record of protests.

Sec. 1668. Each notary public shall record in his official register, in a comprehensive manner, a copy of every bill of exchange, promissory note or obligation received by him for demand and protest, his official act and the date thereof, stating specifically the name of each drawer or indorser or other person notified, and the place where notice was delivered, or to which notice was sent. [C. L. 1876, ch. 88, § 7.]

Action on notarial bond.

Sec. 1669. If any person shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public, the person damaged or injured may maintain a civil action, on the bond of such notary public, against such notary public and his sureties; and a recovery in such action shall not be a bar to any future action for other cause, to the full amount of the bond. [C. L. 1876, ch. 88, § 8.]

Register to be deposited with register of deeds.

Sec. 1670. Each person who has held the office of notary public, shall, within thirty days after the expiration of his term of office, or his removal from office, or his removal from the county, deposit his official register with the register of deeds for the county, who shall preserve the same; and in case of death of a person holding the office of notary public, his executor or administrator shall, within thirty days after his decease, deposit his official register with the register of deeds, and any person who shall neglect or fail to fulfill and perform the duty prescribed in this section, shall be liable in the penal sum of two hundred dollars, to be applied to the school fund of the county, which sum may be recovered by any citizen of the county suing therefor. [C. L. 1876, ch. 88, § 9.]

Neglect of duty by register of deeds—Penalty.

SEC. 1671. If any register of deeds shall neglect or fail to fulfill and perform the duties imposed on him by this title, such person shall be liable in the penal sum of two hundred dollars, to be recovered and applied as provided in the preceding section. [C. L. 1876, ch. 88, § 10.]

Defects in notarial seal disregarded,

SEC. 1672. No deed, mortgage, power of attorney, or other instrument in writing, heretofore executed and acknowledged before a notary public, and no certificate of an official act of any notary public within this territory, shall be held invalid or defective, because the official seal of the notary certifying thereto, contained the initial or abbreviation of any name or word, or different words from those required to be contained or engraven on the seal of the notary public. [C. L. 1876, ch. 88, § 11.]

When justice and probate judge may protest paper.

SEC. 1673. When the holder of any instrument desires it to be protested, and no notary public can be found, it shall be lawful for any judge of probate or justice of the peace of the county wherein said instrument is required to be protested, to perform the services herein required to be performed by notaries public, and to be entitled to the same fees as are hereinafter provided for notaries public for similar services. [C. L. 1876, ch. 88, § 15.]

CHAPTER 2.

COMMISSIONERS.

SECTION.
1674. Appointment—Term of office—Powers.
1675. Official acts to be effectual.
1676. Official seal and oath of office.

SECTION.
1677. Secretary to notify county clerks of appointments, etc., of commissioners.
1678. County clerk to keep record of appointments, etc.

Appointment—Term of office—Powers.

SEC. 1674. The governor may appoint in each of the United States and territories and in the District of Columbia, one or more commissioners to continue in office during the pleasure of the governor for the time being, and every such commissioner shall have power to administer oaths and take depositions and affidavits to be used in this territory, and also to take the acknowledgments of deeds, powers of attorney, or other instruments to be recorded in this territory. [S. L. 1882, ch. 39, § 1.]

Official acts to be effectual.

SEC. 1675. All oaths administered by the said commissioners, all affidavits and depositions taken by them, and all acknowledgments aforesaid, certified by them, shall be as effectual in law, to all intents and purposes as if done and certified by any authorized officer within this territory. [S. L. 1882, ch. 39, § 2.]

Official seal and oath of office.

SEC. 1676. Before any commissioner appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall provide an official seal, and take and subscribe an oath, before any officer authorized to administer oaths, and having an official seal, in the state or territory for which said commissioner was appointed, that he will faithfully discharge all the duties of his office, which oath together with his autograph and an impression of his seal of office he shall immediately file in the office of the secretary of this territory. [S. L. 1882, ch. 39, § 3.]

Secretary to notify county clerks of appointments, etc., of commissioners.

SEC. 1677. When any person has been appointed, and shall have qualified as commissioner under the provisions of this chapter, it shall be the duty of the secretary of the territory, within thirty days after he has received notice that such commissioner has so qualified, to forward to the county clerk of each county in this territory a written notice which shall contain the name of the commissioner, the name of the state, territory or district for which such commissioner was appointed and qualified, the date of his appointment, the date on which he qualified and the date of the expiration of his term of office; and when any commissioner shall resign, or his appointment be revoked by the governor, the secretary shall, within thirty days thereafter, notify the county clerk of each county of such resignation or revocation. [S. L. 1882, ch. 39, §§ 4 and 5.]

County clerk to keep record of appointments, etc.

Sec. 1678. The different county clerks in the territory, shall on receipt of the notices above provided for, file the same, and keep a list thereof, which list shall show the name of each person who has been appointed and qualified as a commissioner, the name of the state, territory or district for which such person was appointed and qualified, the date of his appointment, the date on which he qualified, the date of the expiration of his term of office, and in case of resignation, or the revocation of his appointment, it shall also be entered on said list. [S. L. 1882, ch. 39, § 6.]

TITLE 32. OFFICERS—TERRITORIAL.*

CHAPTER 1. ATTORNEY GENERAL.
CHAPTER 2. TREASURER AND AUDITOR.
CHAPTER 3. LIBRARIAN.
CHAPTER 4. STENOGRAPHER.
CHAPTER 5. INSURANCE COMMISSIONERS.
CHAPTER 6. GEOLOGIST AND MINING ENGINEER.
CHAPTER 7. PENITENTIARY COMMISSIONERS.

CHAPTER 1.

ATTORNEY GENERAL.

SECTION.
1679. Appointment and qualifications.
1680. Term of office.
1681. Bond.
1682. Vacancy in office, how filled.
SECTION.
1683. General duties.
1684. Further duties—Official reports.
1685. Compensation.

Appointment and qualifications.

SEC. 1679. There shall be an attorney general of the territory, who shall be appointed by the governor, by and with the consent of the legislative council. He shall hold his office for a term of two years, and until his successor shall be appointed and shall have qualified. He shall keep his office at the capital of the territory, and no person shall be appointed to this office unless, at the time of his appointment, he shall have been an actual resident of the territory and a practicing attorney in good standing in its courts of record for two years next preceding such appointment. [S. L. 1886, ch. 38, § 1.]

Term of office.

SEC. 1680. The first term of the office of attorney general created by this chapter shall commence on the thirty-first day of March, one thousand eight hundred and eighty-six, and shall continue for the period of two years thereafter, and until his successor shall be appointed and shall have qualified. [S. L. 1886, ch. 38, § 2.]

Bond.

SEC. 1681. Before entering upon the duties of his office the attorney general, so appointed, shall give a bond to the Territory of Wyoming, with sureties, to be approved by the governor or acting governor of the territory, in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office. [S. L. 1886, ch. 38, § 3.]

Vacancy in office—How filled.

SEC. 1682. In case of a vacancy in the office of attorney general, occasioned by resignation, death, sickness, removal from the territory, removal from office, or arising from any other cause, when the legislature is not in session,

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*For inspector of coal mines, see § 1647.
For veterinarian, see § 4199.
For commissioners of pharmacy, see § 1934.
For trustees blind, deaf and dumb asylum, see § 3726.
For capitol building commissioners, see § 3666.
For university building commissioners, see § 3676.
For insane asylum building commissioners, see § 3740.
For superintendent of public instruction, see § 3905.
For superintendent of weights and measures, see § 4214.
For provisions in laws of congress relating to the appointment of territorial officers, and the filling of vacancies, see U. S. Rev. Stat. §§ 1857 and 1858.

the governor shall appoint a suitable person to fill such vacancy, who shall give the same bond and perform the same duties as are prescribed for the attorney general by the provisions of this chapter, and the person so appointed shall hold his office for the unexpired term for which such appointment shall have been made. [S. L. 1886, ch., 38, § 4.]

General duties.

SEC. 1683. The attorney general shall attend each of the terms of the supreme court and there prosecute or defend, as the case may be, all causes to which the territory may be a party. He shall institute such suits in the several district courts as the interests of the territory may require, and he shall account for and pay over all moneys to the territorial treasurer which may come into his hands belonging to the territory. [S. L. 1886, ch. 38, § 5.]

Further duties—Official report.

SEC. 1684. When required the attorney general shall give his opinion in writing, without fee, to the governor, the secretary of the territory, and to all officers appointed under the territorial government, as well as to the legislature or to either house thereof, upon any question of law. He shall also, within ten days next preceding the meeting of the legislature, make a report to the governor of the condition of the affairs of his department, and in said report make such suggestions as shall appear to him calculated to improve the laws of the territory, and shall communicate to the governor or either house of the legislature, whenever requested, any information concerning his office. [S. L. 1886, ch. 38, § 6.]

Compensation.

SEC. 1685. The attorney general shall receive an annual salary of twelve hundred dollars, to be paid quarterly by the territorial treasurer, on the warrant of the territorial auditor, drawn for the purpose. [S. L. 1886, ch. 38, § 7.]

CHAPTER 2.

TREASURER AND AUDITOR.

SECTION.
1686. Appointment—Term of office—Oath—Filling vacancies—Deputies.
1687. Bonds of officers and deputies.
1688. Qualifications of sureties.
1689. Approval and filing of bonds.
1690. Bonds to be given before entering on duties.
1691. Official seals.
1692. Contingent expenses.
1693. General duties of auditor.
1694. Auditor to report to legislature.
1695. Enumerated duties of auditor.
1696. Enumerated duties of treasurer.
1697. Treasurer to grant duplicate receipts.
1698. Collectors of revenue to exhibit accounts to auditor.
1699. Collectors to make payment in ten days.
1700. Warrant of distress against delinquents.
1701. Sheriff to collect by distress and sale.
1702. Manner of making sale.
1703. Mileage of sheriff.
1704. Time for exhibiting claims against territory.
1705. Set-offs in suits by territory.
1706. Auditor may take evidence concerning claims.
1707. Preservation of records by auditor.
1708. Claims, etc., to be paid by auditor's warrants
1709. Warrant not to be issued in absence of appropriation.
1710. Appeal from auditor to legislature.
1711. When claim to be audited in absence of appropriation.
SECTION.
1712. Auditor to report defaulting officers.
1713. Defaulters to be advertised.
1714. Access to books and accounts.
1715. Letter books.
1716. Issuing unauthorized warrant—Penalty.
1717. Refusing to pay lawful warrant—Penalty.
1718. Malfeasance of auditor or treasurer—Penalty.
1719. When territory has lien on realty of debtor.
1720. Committee to settle with auditor and treasurer—Oath.
1721. Duties of committee.
1722. Legislative committee—Time of examining accounts—Reports.
1723. Final settlement of accounts.
1724. Certificate.
1725. Duplicate certificates to be given if legislature not in session.
1726. Action on settlement by legislature.
1727. Compensation of *pro tempore* officers.
1728. Compensation of auditing committee.
1729. Auditor and treasurer may administer oaths.
1730. Compensation of auditor and treasurer.
1731. Fiscal year—Balancing accounts—Succession in office.
1732. When officers shall balance accounts and make reports.
1733. Warrants not to exceed appropriation—Claims to be itemized and verified.
1734. Funds to be paid only in warrants.
1735. Penalty for violating last two sections.

Appointment—Term of office—Oath—Filling vacancies—Deputies.

SEC. 1686. The governor shall nominate and by and with the consent of the council appoint during each regular session of the legislature a territorial treasurer and a territorial auditor, who shall hold their respective offices two years, and until their successors are appointed and qualified. The official terms of these officers shall be uniform both in beginning and termination. The terms of office shall begin at noon on the thirty-first day of March following their appointment and end at noon on the thirty-first day of March two years thereafter. The said treasurer and auditor shall be commissioned by the governor and shall take the oath of office prescribed by law, which shall be indorsed on their respective commissions. They shall keep their offices at the seat of government of the territory, and if either officer is not a resident of that place he shall appoint a deputy who resides there to represent him. Vacancies occurring in either of the offices of treasurer or auditor when the legislature is not in session shall be filled by appointment by the governor, the person or persons so appointed to held their offices respectively for the unexpired term. The territorial treasurer and auditor shall be removable at any time by the governor for cause, but the fact of such removal and the cause therefor shall be reported by the governor to the next legislative assembly of the territory at the opening of the session. [S. L. 1882, ch. 104, § 1.]

Bonds of officers and deputies.

SEC. 1687. The territorial treasurer shall give bond to the Territory of Wyoming in the penal sum of not less than seventy-five thousand dollars conditioned that he will truly and justly account for all moneys coming into his hands by virtue of his office; and the territorial auditor shall give like bonds in the penal sum of fifteen thousand dollars conditioned for the faithful performance and discharge of all the duties of his office as auditor, which several bonds as to the form and terms thereof and the sufficiency of the sureties shall, before being accepted, be approved by the governor or acting governor, whose approval when given shall be endorsed on said bonds and said bonds, together with the oath of office, shall then be deposited in the office of the secretary of the territory; *Provided*, That if at any time the sureties or any of them upon any official bond shall die, remove from this territory, become insolvent or from any other cause cease to possess the qualifications required by this chapter, the secretary of the territory shall require the officer giving such bond to give a new bond with such sureties as are required by this chapter; *Provided further*, That the treasurer and auditor, or either of them, may appoint a deputy to perform the duties of their respective offices, but only upon the express condition that such appointment shall not extend beyond a period of six months, and said auditor and treasurer shall be held responsible to the territory for all acts of said deputy pertaining to such office. [S. L. 1882, ch. 104, § 2.]

Qualifications of sureties.

SEC. 1688. Each surety, when he shall sign such bond, shall make affidavit that he is a resident of this territory, that he is worth the amount to be secured by such bond, over and above all debts, liabilities and exemptions, and that the property named in such bond is situated in this territory, which affidavit shall be attached to the bond and be sworn to before any officer authorized by law to administer oaths; *Provided*, That any surety upon any official bond, who shall wilfully, falsely and corruptly make affidavit as to any of the qualifications required of him, as such, shall be guilty of perjury, and upon conviction thereof, shall be imprisoned in the penitentiary of the Territory of Wyoming for a term of not exceeding ten years. [S. L. 1877, p. 133, § 3.]

Approval and filing of bonds.

SEC. 1689. The secretary of the territory shall indorse on the bond his approval thereof, stating the time of approval, and file the same in his office. [C. L. 1876, ch. 113, p. 572, § 4.]

Bonds to be given before entering on duties.

SEC. 1690. No auditor or treasurer shall enter upon the duties of his office until he shall have given bonds, as specified in the foregoing sections. [C. L. 1876, ch. 113; p. 572, § 5.]

Official seals.

SEC. 1691. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers and documents certified from either of such officers respectively. [C. L. 1876, ch. 113, p. 572, § 6.]

Contingent expenses.

SEC. 1692. All books, maps, stationery, furniture, office rent and fuel necessary for the use of the offices of auditor and treasurer, shall be furnished at the expense of the territory. [C. L. 1876, ch. 113, p. 572, § 7.]

General duties of auditor.

SEC. 1693. The auditor shall be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt, and fiscal affairs not required by law to be kept in some other office, or kept by some other person. [C. L. 1876, ch. 113, p. 573, § 1.]

Auditor to report to legislature.

SEC. 1694. He shall prepare and report to the legislative assembly, at the commencement of each session:

First—A detailed and full statement of the condition of the revenue and the amount of the expenditures for the two preceding years;

Second—A full and detailed statement of the public debt;

Third—Estimates of the revenue and expenditures for the two succeeding fiscal years;

Fourth—Such plans as he may deem expedient for the support of the public credit, for lessening the public expenses, for promoting economy, in the public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the territory;

Fifth—A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended;

Sixth—A tabular statement showing the amount of revenue chargeable to each county for the two preceding years, the aggregate amount of each object of taxation, together with the tax due on the same. [C. L. 1876, ch. 113, p. 573, § 2.]

Enumerated duties of auditor.

SEC. 1695. He shall:

First—Audit and settle all claims against the territory payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers and persons;

Second—Draw all warrants upon the treasurer for money, except only in cases otherwise expressly provided for by law;

Third—Express in the body of any warrant which he may draw upon the treasury for money, the particular fund appropriated by law out of which the same is to be paid;

Fourth—Audit, settle and adjust the accounts of the collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury;

Fifth—Keep an account between the territory and the territorial treasury;

Sixth—Keep an account of all debts and credits between the territory and the United States, and between the territory and every other state, sovereignty, community, officer or person, with whom the territory may have dealings, and of any separate fund in the territory authorized by law;

Seventh—Direct prosecution in the name of the territory for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who may, by any means, become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the territory;

Eighth—Give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office;

Ninth—Perform all such other duties as may be required of him by law. [C. L. 1876, ch. 113, p. 573, § 3.]

Enumerated duties of treasurer.

Sec. 1696. The treasurer shall:

First—Receive and keep all moneys of the territory, not expressly required by law to be received and kept by some other person;

Second—Pay all warrants duly and legally issued by the auditor so long as there are in his hands funds sufficient to pay such warrants; *Provided*, That his payment for any purpose shall in no case exceed the amount appropriated for such purpose;

Third—Keep a just, true and comprehensive account of all money received and disbursed;

Fourth—Keep a just and true account of each head of appropriation made by law, and the disbursements made under the same;

Fifth—Render his accounts to the auditor for settlement quarterly, or oftener if required;

Sixth—Report to each house of the legislative assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the two preceding years;

Seventh—Give information in writing to either house of the legislative assembly whenever required, upon any subject connected with the treasury, or touching any duties of his office;

Eighth—Perform all such other duties as may be required of him by law. [C. L. 1876, ch. 113, p. 574, § 1. S. L. 1882, ch. 104, § 4.]

Treasurer to grant duplicate receipts.

Sec. 1697. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount. [C. L. 1876, ch. 113, p. 574, § 2.]

Collectors of revenue to exhibit accounts to auditor.

Sec. 1698. All collectors of the revenue and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor on or before the third Monday in December in each year, to be audited, adjusted and settled, and the auditor shall proceed, without unnecessary delay, to audit, adjust and settle the same and report to the treasurer the balance found due. [S. 1877, ch. 133, § 4.]

Collectors to make payment in ten days.

Sec. 1699. If any of the persons mentioned in the preceding section, shall fail to pay the amount so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement is required, the delinquent shall forfeit to the territory the amount of the commission allowed him by law, and also two per centum per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid, until actual payment, and the auditor shall charge such delinquent accordingly. [C. L. 1876, ch. 113, p. 574, § 2.]

For further provisions concerning settlement with collectors, see § 1832.

Warrant of distress against delinquents.

SEC. 1700. Immediately after such delinquency shall occur, the auditor shall issue a warrant of distress against such delinquent and his sureties, directed to the sheriff of the proper county, or if there be no sheriff, or if he shall be disqualified to act, then to the sheriff of some adjoining county, (who is authorized and required to execute the same, and who, together with his sureties shall be liable on his official bond in the same manner and to the same extend as if the writ were to be executed in his own county), stating therein the amount due, and the penalties and forfeitures. [C. L. 1876, ch. 113, p. 575, § 3.]

Sheriff to collect by distress and sale.

SEC. 1701. Such sheriff shall levy and collect the amount named in such warrant, together with the penalties and forfeitures stated in the writ, by the distress and sale of goods, chattels and real estate of the delinquent, and, for the want of sufficient goods and chattels and real estate of the delinquent to satisfy such warrant, then by the distress and sale of the goods and chattels and real estate of the sureties of such delinquent. [C. L. 1876, ch. 113, p. 575, § 4.]

Manner of making sale.

SEC. 1702. Property distrained shall be advertised and sold in such manner, and at such time and place, as is prescribed by law for advertising and selling property by virtue of a writ of *fieri facias*, and the sum collected shall be accounted for and paid into the treasury within sixty days after its collection, unless the first Monday in November shall intervene, and, in that event, then on or before that day. [C. L. 1876, ch. 113, p. 575, § 5.]

Mileage of sheriff.

SEC. 1703. The officer collecting money by virtue of a distress warrant, shall receive the same mileage for paying it into the treasury, as is allowed by law to county treasurers for the same service, but if such officer shall be the collector of the revenue, he shall not receive such mileage, if such money be paid at the time of paying the revenue. [C. L. 1876, ch. 113, p. 575, § 6.]

Time for exhibiting claims against territory.

SEC. 1704. Persons having claims against the territory shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within one year after such claim shall accrue, and not afterwards. [C. L. 1876, ch. 113, p. 575, § 7.]

Set-offs in suits by territory.

SEC. 1705. In all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory, as a set-off, but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases when it shall be proved to the satisfaction of the court that the defendant at the time of trial is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the territory, sickness or unavoidable accidents. [C. L. 1876, ch. 113, p. 575, § 8.]

Auditor may take evidence concerning claims.

SEC. 1706. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses or others, on oath or affirmation, touching any matters material to be known in the settlement of such accounts, and for that purpose may issue subpœnas, and compel witnesses to attend before him, and give evidence in the same manner, and by the same means, allowed by law to courts of record. [C. L. 1876, ch. 113, p. 575, § 9.]

Preservation of records by auditor.

SEC. 1707. All accounts, vouchers, and documents settled, or to be settled, by the auditor, shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein who may require the same. [C. L. 1876, ch. 113, p. 576, § 10.]

Claims, etc., to be paid by auditor's warrants.

SEC. 1708. In all cases of accounts audited and allowed against the territory, and in all cases of grants, salaries, pay and expenses, allowed by law, the auditor shall draw a warrant on the treasurer for the amount due, in the form set forth by the revenue department. [C. L. 1876, ch. 113, p. 576, § 11.]

Warrants not to be issued in absence of appropriation.

SEC. 1709. No warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law, nor shall the whole amount drawn for, or paid under, one head ever exceed the amount appropriated by law for that purpose. [C. L. 1876, ch. 113, p. 576, § 12.]

Appeal from auditor to legislature.

SEC. 1710. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, the auditor shall, at the request of such person, certify his decision, with his reasons therefor, specifying the items rejected, if less than the whole, under the seal of his office, and refer the same to the legislative assembly. [C. L. 1876, ch. 133, p. 576, § 13.]

When claim to be audited in absence of appropriation.

SEC. 1711. In all cases where the law recognizes a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and adjust the same, and give the claimant a certificate of the amount thereof under official seal, if demanded, and shall report the same to the legislative assembly, with as little delay as possible. [C. L. 1876, ch. 113, p. 576, § 14.]

Auditor to report defaulting officers.

SEC. 1712. The auditor shall report to the legislative assembly within ten days after the commencement of each regular session, a list of all collectors of the revenue and other holders of public money whose accounts have remained unsettled for the space of six months after they ought to have been settled according to law, and the reasons therefor. [C. L. 1876, ch. 113, p. 576, § 15.]

Defaulters to be advertised.

SEC. 1713. When the collectors of the revenue, or other holders of the public money, shall fail to pay the amount due by them into the treasury within the time prescribed by law, the auditor shall, within thirty days after such default, publish for one week in two newspapers printed at two of the most public places in the territory, a list of all such defaulters, with the amounts respectively due from each. [C. L. 1876, ch. 113, p. 576, § 16.]

Access to books and accounts.

SEC. 1714. The auditor and treasurer shall have free access to each other's offices for the inspection of all books, accounts and papers which they respectively contain, and free access to all the other offices of the territory, for the inspection of such books, accounts and papers as concerned in any of their duties. [C. L. 1876, ch. 113, p. 576, § 1.]

Letter books.

SEC. 1715. The auditor and treasurer shall each keep a letter book in which shall be recorded all official letters they may write. [C. L. 1876, ch. 113, p. 576, § 2.]

Issuing unauthorized warrant—Penalty.

SEC. 1716. If the auditor shall knowingly issue any warrant upon the treasury not authorized by law, he shall, upon conviction thereof, be fined in a sum not exceeding four-fold the amount of such warrant, and imprisonment for any length of time not exceeding one year, and shall be deemed guilty of a misdemeanor in office. [C. L. 1876, ch. 113, p. 577, § 3.]

Refusal to pay lawful warrant—Penalty.

SEC. 1717. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof four-fold the amount of such warrant, to be recovered by civil action against the treasurer and his sureties on his official bond, or otherwise according to law, and the treasurer shall be deemed guilty of a misdemeanor in office. [C. L. 1876, ch. 113, p. 577, § 4.]

Malfeasance of auditor or treasurer—Penalty.

SEC. 1718. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or by color of his office shall knowingly do any act not authorized by law or in any other manner than is required by law, he shall forfeit to the territory any sum not exceeding one thousand dollars, and shall be deemed guilty of a misdemeanor in office. [C. L. 1876, ch. 113, p. 577, § 5.]

When territory has lien on realty of debtor.

SEC. 1719. The amount of every account audited, adjusted, and found due to the territory, according to this chapter, with the penalties and interest thereon, is declared to be a lien upon the real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof. [C. L. 1876, ch. 113, p. 577, § 6.]

Committee to settle with auditor and treasurer—Oath.

SEC. 1720. Previous to each regular session of the legislative assembly, the secretary of the territory shall select and notify by giving ten days notice, one member elected to the council and two members elected to the house of representatives, to attend at the seat of government six days before the commencement of the session, for the purpose of settling with the auditor and treasurer. The members thus selected, before entering on such duties, shall take the oath required by law of members of the legislative assembly, which shall be indorsed and certified on their certificates of election. [C. L. 1876, ch. 113, p. 577, §§ 7 and 8.]

Duties of committee.

SEC. 1721. The members selected or a majority of them shall examine the accounts and records of the treasurer and auditor up to and inclusive of the thirty-first day of December then past, and shall report to each house of the legislature the result of such examination with such explanation and recommendation as they deem necessary. [S. L. 1882, ch. 104, § 5.]

Legislative committee—Time of examining accounts—Reports.

SEC. 1722. A committee similarly constituted shall be appointed by the legislature during each regular session and such committee shall on the thirty-first day of March next following, examine the accounts and records of the two officers, see that the books are correctly balanced, cancel all vouchers that have been allowed, and that are included in the accounts to that date, make an indorsement on the books to show their examination and report the result of said examination in writing to the governor. The committee shall meet again at the seat of government on the twenty-fifth day of March of the following year and report said examination continuing it up to and including the thirty-first day of March, the end of that fiscal year, and shall make a corresponding report to the governor. Their reports of both examinations shall include a trial balance from the books, a copy of which shall be furnished by the governor as a guide to the next subsequent committee. Committees appointed by the legislature to perform these duties shall be paid for such services as provided in this chapter. Vacancies occurring in such committees when the legislature is not in session shall be filled by the governor. [S. L. 1882, ch. 104, § 5.]

See § 4268.

Final settlement of accounts.

SEC. 1723. Immediately after the appointment and qualification of any auditor or treasurer, or the resumption of his duties by either officer, (if in the meantime an auditor or treasurer *pro tempore* shall have been appointed), the legislative assembly, if in session, or if not, the secretary of the territory, shall cause a settlement to be made of the accounts of the former auditor or treasurer, *pro tempore*, remaining unsettled in the manner provided in the last three preceding sections. [C. L. 1876, ch. 113, p. 578, § 11.]

Certificate.

SEC. 1724. If the legislative assembly shall be in session when such settlement is made, it shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement, showing the balance of money, securities and effects for which he is accountable, and what has been delivered to his successor. [C. L. 1876, ch. 113, p. 578, § 12.]

Duplicate certificates to be given if legislature not in session.

SEC. 1725. If the legislative assembly shall not be in session when such settlement is made, the persons appointed by the secretary to make such settlement, shall make out duplicate certificates of such settlements, showing what is required to be shown in the certificate, to be made out according to the provisions of the preceding section, one of which shall be delivered to the person entitled thereto, and the other to the secretary, to be laid before the legislative assembly at its next session. [C. L. 1876, ch. 113, p. 578, § 13. S. L. 1879, ch. 84 ,§ 1.]

Action on settlement by legislature.

SEC. 1726. When the certificate mentioned in the next preceding section shall be laid before the legislative assembly, if it approve the same, it shall cause the proper entries to be made in the books of the auditor and treasurer, and if it disapprove thereof, it shall cause another settlement to be made. [C. L. 1876, ch. 113, p. 578, § 14.]

Compensation of pro tempore officers.

SEC. 1727. Any person appointed by the governor of the territory to fill a vacancy pursuant to this chapter, shall have the same compensation allowed by law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service. [C. L. 1876, ch. 113, p. 578, § 15.]

Compensation of auditing committee.

SEC. 1728. The persons appointed by the secretary to make such settlement with the auditor and treasurer, shall receive the same compensation as is allowed by law to members of the legislative assembly, during the time they may be engaged in such service. [C. L. 1876, ch. 113, p. 578, § 16. S. L. 1879, ch. 84, § 1.]

Auditor and treasurer may administer oaths.

SEC. 1729. The auditor and treasurer shall each have power to administer all oaths and affirmations required by law in matters touching the duties of their respective offices. [C. L. 1876, ch. 113, p. 578, § 17.]

Compensation of auditor and treasurer.

SEC. 1730. The auditor of this territory shall receive a salary of one thousand dollars per annum, which shall be paid quarterly out of the territorial treasury, and the treasurer of this territory shall receive as compensation for his services a salary of four hundred dollars and two per cent. upon all money paid into the territorial treasury as revenue, or arising from any sources of taxation, fines or forfeitures. [C. L. 1876, ch. 113, p. 579, § 2.]

Fiscal year—Balancing accounts—Succession in office.

SEC. 1731. The fiscal year for all departments of the territorial government shall begin at noon on the thirty-first day of March in each year. The books and accounts of the terrritorial treasurer and territorial auditor shall be balanced on that day in each year for the purpose of permitting their verification by the special legislative committee, and this duty shall be performed by said treasurer and auditor in addition to those defined in the next succeeding section. Biennially at the end of their respective terms of office the treasurer and auditor shall, upon the day above named, deliver to their successors all official books, papers, records and balances of funds which may be in their possession; *Provided*, That if either or both of such successors be not appointed, confirmed and qualified, the existing incumbent of the office shall retain such territorial property until such appointment, confirmation and qualification of his successor shall have taken place. [S. L. 1882, ch. 47, § 1.]

When officers shall balance accounts and make reports.

SEC. 1732. All fiscal officers of the territory shall balance their accounts on the thirty-first day of December of each year, and they as well as all other territorial officers who are required by law to report the condition of their respective departments, shall hereafter make such report, (covering the period since last report and up to and inclusive of said thirty-first day of December), to the governor of the territory before the tenth day of January next succeeding. [S. L. 1882, ch. 47, § 2.]

Warrants not to exceed appropriation—Claims to be itemized and verified.

SEC. 1733. The territorial auditor shall in no case draw warrants, nor the territorial treasurer pay warrants drawn on any appropriation in excess of the amount mentioned therein, and the auditor shall in no case draw warrants for the keeping or transporting of territorial prisoners except on accounts, showing the names of such prisoners, the time each prisoner has been kept and the distance transported. Which account so made out shall be verified by affidavit setting forth that said account is just and correct and has not been paid nor any part thereof. And the territorial auditor shall in no case draw warrants on the territorial treasurer except on accounts itemized, and with each item dated showing the particular time each item was furnished, or service rendered and verified by affidavit as aforesaid, except as herein provided. [S. L. 1882, ch. 3, § 27.]

Funds to be paid only on warrants.

SEC. 1734. The territorial treasurer shall in no case disburse or pay out the territorial funds except on warrants drawn by the auditor. [S. L. 1882, ch. 3, § 28.]

Penalty for violating last two sections.

SEC. 1735. Any violations of the provisions of the last two preceding sections shall be deemed a felony and upon conviction thereof, the perpetrator shall be punished by a fine of not more than three thousand dollars and by imprisonment for not more than five years in such prison as may be designated as the territorial penitentiary of Wyoming Territory. [S. L. 1882, ch. 3, § 29.]

CHAPTER 3.

LIBRARIAN.

SECTION.
1736. Appointment and term of office.
1737. To have custody of library.
1738. To receive and label books.
1739. To receipt for books and keep a record thereof.
1740. Library rules—Authority of librarian.
1741. Exchange of books.
1742. How books issued—Return of same.
1743. Librarian to report to legislature.
1744. To issue circular asking contributions of mineral specimens.
SECTION.
1745. Disposition of specimens.
1746. Circular what to contain.
1747. Cabinet to be open for inspection.
1748. Library hours.
1749. Bond of librarian.
1750. Compensation of librarian.
1751. Library to be insured.
1752. Officers to deposit books in library.
1753. Sale of compiled laws.
1754. Proceeds of sale, how applied.

Appointment and term of office.

SEC. 1736. There shall be a territorial librarian, who shall be appointed by the governor of the territory, by and with the consent of the legislative council, who shall hold his office for the term of two years, and until his successor is duly appointed and qualified. [C. L. 1876, ch. 110, § 1.]

To have custody of library.

SEC. 1737. The librarian shall have the charge and custody of all books, maps, papers, charts, engravings, paintings and all other things properly belonging to the library, or directed to be deposited therein, and shall also keep a regular file of all newspapers published in the territory which shall be donated thereto. [C. L. 1876, ch. 110, § 2.]

To receive, and label books.

SEC. 1738. It shall be the duty of the librarian to receive and transfer all books or documents sent by other states or territories to the territorial library, from the postoffice or other depot to which they may have been consigned, and to properly label and arrange them in the library. [C. L. 1876, ch. 110, § 3.]

To receipt for books and keep a record thereof.

SEC. 1739. The territorial librarian shall cause the receipt of each book, map or other document that may come into his possession, to be acknowledged, and he shall keep a record of all books and documents so received, and shall report the same as provided by law. [C. L. 1876, ch. 110, § 4.]

Library rules—Authority of librarian.

SEC. 1740. And the librarian shall have full power to make any rules and regulations, proper and necessary for the preservation and increase of the library not inconsistent with law, which the librarian shall in all cases observe, and to superintend and direct all expenditures and appropriations made for the library, under the supervision and control of the judges of the supreme court. [C. L. 1876, ch. 110, § 5.]

Exchange of books.

SEC. 1741. The librarian is hereby directed to exchange statutes, journals, legislative documents, and other books with other legislative bodies and libraries, as he shall deem proper. [C. L. 1876, ch 110, § 6.]

How books issued—Return of same.

SEC. 1742. It shall be the duty of the librarian to issue books upon the order of the chief justice, or either of the associate justices of the territory, or upon the order of the governor of the territory; *Provided*, That, in each case, said justices and governor shall become responsible to the Territory of Wyoming for the return of said books, in as good order as when they were taken from the library, and if any damage be done said books, or they be lost, the librarian shall estimate the damage or value of said books, and, if necessary, recover the same of either the party authorizing the loan, or the party receiving them, by civil process, in the name of the Territory of Wyoming. [C. L. 1876, ch. 110, § 7.]

Librarian to report to legislature.

SEC. 1743. The librarian shall, on the first day of each regular session of the legislature, make a full and complete report of all receipts and expenditures, and of the condition of the library, and all other matters in relation thereto, for the information of the legislative assembly. [C. L. 1876, ch. 110, § 8.]

To issue circular asking contributions of mineral specimens.

SEC. 1744. It shall be the duty of the librarian to issue a printed circular to the citizens of the territory, inviting them to deposit in the territorial cabinet such minerals and geological specimens as any citizen may find on his premises, or in any portion of the territory. [C. L. 1876, ch. 110, § 9.)

Disposition of specimens.

SEC. 1745. Whenever any such specimens may be deposited in the cabinet, it shall be the duty of the librarian to correctly label and classify each specimen, and to enter in the book kept for that purpose the name of the donor, and the character and quality of each specimen donated. [C. L. 1876, ch. 110, § 10.]

Circular, what to contain.

SEC. 1746. The circular of the librarian will specify the kind and quality of specimens desired, both in geology, mineralogy and fossils. [C. L. 1876, ch. 110, § 11.]

Cabinet to be open for inspection.

SEC. 1747. The cabinet so collected shall be open for inspection of all persons, subject to the rules and regulations of the librarian, for the proper preservation of such specimens, during the hours as provided for the library. [C. L. 1876, ch. 110, § 12.]

Library hours.

SEC. 1748. It shall be the duty of the librarian to keep the library open from the hours of ten o'clock a. m. until 12 o'clock m., and from two o'clock p. m. until four o'clock p. m., on each day during the year, Sundays and holidays excepted. [C. L. 1876, ch. 110, § 13.]

Bond of librarian.

SEC. 1749. The librarian, before he enters upon the discharge of his duties, shall give a good and sufficient bond in the penal sum of five thousand dollars, to be approved by the governor, to be filed in his office, made payable to the Territory of Wyoming, conditioned that he will faithfully discharge the duties of his office and deliver over to his successor in office all books and property belonging to the library, according to laws and such regulations as may be adopted by the legislative assembly. [C. L. 1876, ch. 110, § 14.]

Compensation of librarian.

SEC. 1750. The compensation of the territorial librarian and *ex officio* superintendent of public instruction shall be a salary of eight hundred dollars per annum, payable quarterly, which salary shall be in full for all services which he may perform in said offices. [S. L. 1879, ch. 78, § 1.]

Library to be insured.

SEC. 1751. It shall be the duty of the territorial librarian to insure in some first-class insurance company and on the best terms for the territory, the territorial law library for a sum not less than twelve thousand dollars, the policy to run to the Territory of Wyoming. [S. L. 1879, ch. 78, § 2. S. L. 1886, ch. 113, § 21.]

Officers to deposit books in library.

SEC. 1752. It shall be the duty of all officers and persons who now have, or may hereafter receive, any books, maps, charts, or other documents designed for the use of the Territory of Wyoming, to deposit the same immediately on receipt thereof with the territorial librarian, to be by him placed in the territorial library. [C. L. 1876, ch. 95, § 1.]

Sale of compiled laws.

SEC. 1753. The territorial librarian is hereby authorized to sell all such copies of the compiled laws of Wyoming, as may not be needed for the use of the territory, to any person desiring to purchase the same, for the sum of one dollar per volume, and the revenue arising from all such sales to be reported to the territorial treasurer. [S. L. 1882, ch. 24, § 1.]

Proceeds of sale, how applied.

SEC. 1754. All moneys received upon the sale of said compiled laws shall be applied by the territorial librarian to the purchasing of books, for the territorial library, under the direction of the judges of the supreme court. [S. L. 1882, ch. 24, § 3.]

CHAPTER 4.

STENOGRAPHER.

SECTION.
1755. Appointment and qualifications.
1756. Term of office—Salary.
1757. Official designation.
1758. Oath of office—Removal.
1759. Official seal—Authentication of transcripts
1760. Salary and mileage, how paid.
1761. When short-hand report of testimony to be taken—Transcription.

SECTION.
1762. Fees and the payment thereof.
1763. Fees to be taxed as costs.
1764. When county liable for fees.
1765. Certified transcription deemed *prima facie* correct.
1766. Stenographer may take depositions.
1767. Appointment of stenographer for term.
1768. Compensation and fees.

Appointment and qualifications.

SEC. 1755. The governor is authorized and required by and with the advice and consent of the legislative council during each regular session of the legislative assembly to appoint as official territorial stenographer, a short-hand writer skilled in his profession and able at sight to read rapid notes, and practically at the same time dictate the same to not less than three amanuenses. [S. L. 1877, p. 121, § 1. S. L. 1879, ch. 67, § 2. S. L. 1882, ch. 3, § 8.]

Term of office—Salary.

SEC. 1756. All appointments to said position, except when made to fill a vacancy, shall be for two years, and should no appointment be made and confirmed during any session of the legislative assembly, the term of office of the then existing incumbent shall end on the thirty-first day of March next ensuing. The salary of the territorial stenographer shall be fifteen hundred dollars per annum, in addition to the mileage now allowed to him by law. [S. L. 1882, ch. 3, § 8.]

Official designation.

SEC. 1757. The official style of said short-hand writer shall be "Official Stenographer of Wyoming Territory." [S. L. 1877, p. 121, § 2,]

Oath of office—Removal.

SEC. 1758. He shall, before entering upon the duties of his office, take an oath or affirmation before the chief justice of the supreme court of this territory, to faithfully discharge the duties of his office, which oath shall be entered of record in said court, and for the wilful violation of which said stenographer may be indicted and convicted of perjury; said stenographer shall also be removable after trial for and conviction of incompetency, neglect or refusal to perform the duties of his office. [S. L. 1877, p. 121, § 31:]

Official seal Authentication of transcripts.

SEC. 1759. He shall provide himself with an official seal, upon which shall be engraven his name and official title, with which he shall authenticate, (to the best of his knowledge and belief), the correctness of transcriptions of testimony and proceedings, when by him furnished, as hereinafter provided, and the payment of fees therefor. [S. L. 1877, p. 122, § 4.]

Salary and mileage, how paid.

SEC. 1760. Said official stenographer shall receive an annual salary, to be paid to him in twelve monthly equal installments, upon warrants drawn by the auditor upon the territorial treasurer, when a certificate has been presented to the auditor from the presiding judge of the district wherein court was held during the time for which such claim was made, stating that said stenographer has been in attendance by himself, or a competent deputy at court, then last held in said district, or for such term as have been held since the last payment to said stenographer. Said stenographer shall also receive from the territorial treasury, upon like certificate of services at any given term of court, and upon the warrant of the territorial auditor, ten cents per mile for every mile by him actually and necessarily traveled, computed by the most traveled route from Cheyenne to and from the respective places of holding terms of the district court, and in addition to said salary and mileage, he shall receive for the hereinafter provided transcriptions of his short-hand notes, the fees hereinafter mentioned, which shall be paid in the manner hereinafter provided. [S. L. 1879, ch. 67, § 1.]

When short-hand report of testimony can be taken—Transcriptions.

SEC. 1761. When, in any civil case or criminal action or proceeding, or in any preliminary examination in a criminal matter, in any district court of this territory, the presiding judge, either party, personally or by attorney, or the prosecuting attorney, or grand jury, shall desire a short-hand report of the testimony, or any proceedings therein, the presiding judge, if he deem the case a fit one to be reported, shall direct, and it shall be the duty of said official stenographer to cause full short-hand notes of the same taken, and one or more transcriptions thereof, as may by the presiding judge, either party, attorney, prosecuting attorney or grand jury be requested, to be within a reasonable time made; *Provided, however*, That in no civil case shall said stenographer be required to transcribe his notes, or any portion thereof, until the estimated amount of said transcription fees be tendered him or deposited in court by the party or parties requesting such transcription, or in case transcription be ordered by the presiding judge, as hereinafter provided for, until such fees be so tendered or deposited by the party or parties, by said judge directed to pay the same. [S. L. 1877, p. 122, § 6.]

Fees and the payment thereof.

SEC. 1762. Said stenographer's charges for the transcription of his official notes shall not exceed fifteen cents per folio, and in case tender or deposit of fees, as hereinbefore provided, be by him waived, then in civil cases transcription fees shall, upon the furnishing of transcript, be forthwith paid by the party ordering the same, and if in a civil case transcription be ordered by the court, the fees therefor shall be borne equally by the respective parties, or in whole by either party, as the court shall order, and the same shall be tendered or deposited, as provided in the last preceding section, or if such tender and deposit be by the stenographer waived, shall, upon the furnishing of transcript be forthwith paid, as by the court ordered, and upon the failure to pay for any transcription in this chapter provided for, the party or parties so failing may be proceeded against by attachment, as in case of contempt or noncompliance with orders of court. [S. L. 1877, p. 123, § 7.]

Fees to be taxed as costs.

SEC. 1763. When in a civil case transcription fees shall have been paid, and so certified by the official stenographer, they shall be allowed and taxed as costs therein; *Provided*, That if the presiding judge shall, of his own motion, order transcription, hereinbefore provided for, he may direct such taxation thereof in the costs as may to him seem just. [S. L. 1877, p. 123, § 8.]

When county liable for fees.

SEC. 1764. When, in any criminal action or matter, or grand jury matter, in any district court of this territory pending, transcription or transcriptions shall be ordered, as provided for in section seventeen hundred and sixty-one, the fees therefor shall, when verified by the certificate of the presiding judge and prosecuting attorney, be forthwith paid by the county treasurer of the county in which such action or matter shall have been tried or investigated, and such certificate shall, in the settlement of his accounts, be to said treasurer a proper voucher for said payment. [S. L. 1877, p. 123, § 9.]

Certified transcription deemed prima facie correct.

SEC. 1765. Any transcription herein provided for shall, when by said stenographer certified as correct, as aforesaid, and as paid for, be filed among the papers of the case, action or matter in the court in which the same was tried or investigated, and such transcript so filed shall, *prima facie*, be deemed to be and taken as a correct statement of such testimony, proceedings or investigation and the record thereof. [S. L. 1877, p. 123, § 10.]

Stenographer may take depositions.

SEC. 1766. Said stenographer shall, in any county of this territory, have power to take, and over his official seal, certify depositions with like effect as if the same had been taken and certified to by a notary public in and for said county, and said official stenographer may by either of the district courts of this territory be appointed a special master in chancery, to take and certify proofs. [S. L. 1877, p. 123, § 11.]

Appointment of stenographer for term.

SEC. 1767. For the purpose of preserving, for the information of the court, parties litigant and others, a record of the evidence in all cases and proceedings and for the purpose of expediting the public business, the judge of each of the district courts of the territory shall appoint as stenographer for each term of such district court a person well skilled in the art of stenography, who shall, take an oath in open court to make a true, complete and impartial short-hand report of all evidence given upon any trial or proceeding therein; *Provided*, *however*, That no such appointment shall be made in any case, except when the attendance of the "official stenographer of Wyoming Territory" is rendered impossible by his detention in other courts of the territory in the performance of his official duties therein, or by other good and sufficient reasons. [S. L. 1886, ch. 112, § 1.]

Compensation and fees.

SEC. 1768. The stenographer appointed under the provisions of the preceding section shall receive for his services as per diem compensation the sum of ten dollars for each day's attendance upon the court for which he is appointed, and also the same mileage as is given the official stenographer for actual travel; and the amount so allowed shall be certified by the judge of such court, and upon presentation of such certificate, together with a voucher signed and sworn to by such stenographer, the territorial auditor shall draw a warrant upon the treasurer for such amount. Such stenographer shall receive for making transcripts of his notes the same fees as are allowed by law to the official stenographer of Wyoming Territory; *Provided*, Such per diem fees and mileage shall be paid out of the contingent fund appropriated to pay the official territorial stenographer. [S. L. 1886, ch. 112, § 1.]

CHAPTER 5.

INSURANCE COMMISSIONER.

SECTION.	SECTION.
1769. Creation of office.	1771. Qualifications and duties.
1770. Appointment and term of office.	

Creation of office.

SEC. 1769. The office of insurance commissioner, for the Territory of Wyoming, is hereby created and established. [S. L. 1884, ch. 48, § 1.]

Appointment and term of office.

SEC. 1770. There shall be one insurance commissioner for the territory, who shall be appointed by the governor, by and with the consent of the council, and who shall hold his office for the term of two years, and until his successor is appointed and qualified. [S. L. 1884, ch. 48, § 2.]

Qualifications and duties.

SEC. 1771. Said insurance commissioner shall keep an office in and be a resident of the territory, and he shall perform all of the duties, and shall have and exercise the powers, prescribed by law. [S. L. 1884. ch. 48, § 3.]

For duties of insurance commissioner see §§ 603 and 642.

CHAPTER 6.

GEOLOGIST AND MINING ENGINEER.

SECTION.
1772. Creation of office—Qualifications.
1773. Appointment—Term of office.
1774. To report on condition of mines.
SECTION.
1775. To keep record of reports.
1776. To make annual report to governor.

Creation of office—Qualifications.

SEC. 1772. There shall be established the office of territorial geologist and mining engineer. The person appointed to such office in pursuance of this chapter shall be a citizen of Wyoming and he shall live and keep his office within this territory. [S. L. 1879, ch. 45, § 1.]

Appointment—Term of office.

SEC. 1773. Appointments to said office, (except when made to fill a vacancy), shall be for two years, unless sooner removed for cause, and shall be made by the governor during each regular session of the legislature, and should no appointment be made and confirmed during any session, the term of office of the existing incumbent shall end on the thirty-first day of March next ensuing. [S. L. 1882, ch. 3, § 24.]

To report on condition of mines.

SEC. 1774. It shall be the duty of said territorial geologist and mining engineer to make reports on mining property where a proper certificate has been presented showing sufficient development, and that such reports shall be such that they may be presented to the New York and San Francisco, or other stock boards, for the purpose of obtaining a working capital; *Provided*, That such property shall be deemed by the territorial geologist of sufficient value to warrant a favorable report, and that the territorial geologist and mining engineer shall charge fifty dollars for every report (going on the stock boards), said sum to be turned into the territorial treasury and placed to the credit of the territory. [S. L. 1879, ch. 45, § 4.]

To keep record of reports.

SEC. 1775. It shall be the duty of the territorial geologist and mining engineer to keep a book, with proper index alphabetically arranged, in which he shall record all reports made by him, giving the name of the mine owner, name of the mine, where situated, kind of mine, whether gold, silver or copper. [S. L. 1879, ch. 45, § 5.]

To make annual report to governor.

SEC. 1776. It shall be the duty of said geologist and mining engineer to make a report annually, under his hand, of all reports and examinations made during the year, to the governor of the territory, who shall report the same to the legislature of the territory. [S. L. 1879, ch. 45, § 6.]

CHAPTER 7.

PENITENTIARY COMMISSIONERS.

SECTION.
1777. Appointment—Term of office.
1778. Authorized to select penitentiary and make contracts.
1779. Prisons selected to be territorial penitentiaries.
1780. Notice to judges.
1781. Organization of board—Duties of chairman and secretary.
1782. Seal.
1783. Payment of expenses—Chairman to administer oaths.
SECTION.
1784. Contracts for keeping prisoners—Inspection of jails and penitentiary.
1785. Maintenance and removal of prisoners—Clerk to notify board.
1786. Record and accounts of board—Settlement.
1787. Duties of clerk and sheriff—Pardons.
1788. Report of board to legislature.
1789. When sheriffs to transport prisoners.
1790. Prisoners in Nebraska penitentiary.

Appointment—Term of office.

SEC. 1777. There shall be a board of penitentiary commissioners to consist of three citizens of the territory to be nominated by the governor and confirmed by the territorial council, and who shall hold their office for two years, and until their successors are duly appointed and qualified; *Provided*, That when a vacancy occurs in said board by death, resignation or removal and the council shall not be in session, the governor shall have power to fill such vacancy by appointment and the person or persons so appointed shall perform the duties and receive the compensation of such office until the next session of the legislature and until a successor is appointed and qualified. [S. L. 1882, ch. 76, § 1.]

Authorized to select penitentiary and make contracts.

SEC. 1778. It shall be the duty of said board of commissioners a majority of whom shall constitute a quorum for the transaction of business, to investigate as to the cost of maintaining territorial prisoners, and said board is hereby authorized and empowered to determine from time to time where the territorial prisoners shall be confined and to make all contracts between the territory and the authorities of such penitentiary or prison either in or out of the territory; *Provided*, That the penitentiary or prison so selected shall be the one in which prisoners can be transported to and confined and maintained at the least expense to the territory. [S. L. 1882, ch. 76, § 2.]

Prisons selected to be territorial penitentiaries.

SEC. 1779. The penitentiaries or prisons so selected by said board of commissioners, for the confinement and keeping of the territorial prisoners are hereby declared to be territorial penitentiaries of the Territory of Wyoming, and in case of changes being made at any time by the board of commissioners as to the penitentiary or prison where prisoners shall thereafter be confined, the penitentiaries or prisons theretofore used shall remain territorial penitentiaries or prisons for the prisoners already confined therein, but in all cases prisoners shall be sentenced to confinement in the last selected penitentiary or prison. [S. L. 1882, ch. 76, § 3.]

Notice to judges.

SEC. 1780. It shall be the duty of said board of commissioners to notify the judges of the several courts of this territory of the name and location of the penitentiary or penitentiaries or prisons and the distinction, if any be made as to the terms of imprisonment, and it shall be the duty of said judges thereafter to sentence convicts to imprisonment in the penitentiaries or prisons so designated as such in accordance with the term for which each said penitentiary can receive them. [S. L. 1882, ch. 76, § 4.]

Organization of board—Duties of chairman and secretary.

SEC. 1781. Said board of commissioners shall, within thirty days after their appointment, organize by electing from their number a chairman and secretary. The chairman shall preside over all meetings of the board and sign all certificates of indebtedness, bills and all papers approved or allowed by said board. In the absence of the chairman a chairman *pro tempore* may be elected; it shall be the duty of the secretary to keep a perfect record of the proceedings of the board in a well bound book or books to be kept for that purpose. [S. L. 1882, ch. 76, § 5.]

Seal.

SEC. 1782. The board of commissioners shall procure and keep a seal of office which shall be used to authenticate all papers and documents signed by the chairman. All contracts and orders made by said board shall be signed by the chairman of the same and when so signed with seal of said board affixed thereto shall become valid. [S. L. 1882, ch. 76, § 6.]

Payment of expenses—Chairman to administer oaths.

SEC. 1783. All indebtedness incurred by said board in carrying out the provisions of this chapter, together with the compensation of five dollars per day for the time actually employed in such service and also the necessary traveling expenses of each shall be paid out of the territorial treasury upon a certificate of the chairman of the board with the seal of the board attached, stating the items of such indebtedness, expenses and compensation and that the same is just and necessary according to the provisions of this chapter, and upon presentation of said certificate to the auditor of the territory he shall issue his warrant or warrants to the party or parties to whom such money is due and payable, and the treasurer shall pay such warrants out of any moneys appropriated for that purpose. But the auditor shall not issue any warrant without an itemized account properly sworn to, accompanying the certificate of the chairman of the board. Said accounts may be sworn to before the chairman of said board who is hereby authorized and empowered to administer oaths for that purpose. [S. L. 1882, ch. 76, § 7.]

Contracts for keeping prisoners—Inspection of jails and penitentiary.

SEC. 1784. All contracts made for the keeping and transportation of territorial prisoners by said board shall be made in the name of the Territory of Wyoming and said board may contract with more than one penitentiary for the keeping and transportation of prisoners during the same period of time if deemed by said board to be to the best interest of the territory. The said board shall inspect the county jails and territorial penitentiaries whenever they shall deem it necessary and shall keep a record of such inspection and of the condition in which said jails and penitentiaries are found. [S. L. 1882, ch. 76, § 8.]

Maintenance and removal of prisoners—Clerk to notify board.

SEC. 1785. All prisoners sentenced to confinement in any penitentiary shall be maintained at the county jails at the expense of the territory after sentence and until removed to the penitentiary; compensation therefor to be paid at the rate allowed the sheriffs by law for keeping prisoners. Prisoners shall be removed to the penitentiary within ten days after sentence, and it shall be the duty of the clerk of court immediately after sentence is pronounced to notify the board of such sentence. [S. L. 1882, ch. 76, § 9.]

Record and accounts of board—Settlement.

SEC. 1786. The board of penitentiary commissioners shall keep a full and complete record of the prisoners sentenced and confined in any penitentiary of the territory, showing the name of each convict, the date of sentence, date of commitment, age, sex, color, religion and nativity, the nature of the crime committed, the term of sentence, ability of convict to read and write, where confined, when discharged, also all pardons and deaths, and said board shall also keep in a book or books to be provided for that purpose, accounts showing the condition of funds at the disposition of the board, and the same committee appointed to settle with the auditor shall also settle with the chairman of the board of penitentiary commissioners. [S. L. 1882, ch. 76, § 10.]

Duties of clerk and sheriff—Pardons.

SEC. 1787. It shall be the duty of the clerk of court in which any prisoner is convicted and sentenced to confinement in any territorial penitentiary to furnish to the board in writing or on a blank to be furnished for that purpose by the board the name of each convict, the dates of sentence and commitment, the nature of the crime committed, the term of sentence, and the penitentiary or prison where the prisoner is to be confined, together with information of the other facts of which said board is required to keep a record, and it shall be the duty of the sheriff to furnish to the clerk information as to the age, sex, color, religion, nativity, and ability of convict to read and write. It shall be the duty of the governor of the territory immediately upon granting any pardon to notify said board thereof. [C. L. 1882, ch. 76, § 11.]

Report of board to legislature.

SEC. 1788. The said board of penitentiary commissioners shall report its proceedings for the preceding two years, to the legislative assembly of this territory at each session, said report shall contain among other things a full statement of the condition of the funds, and the amount of the expenditures for the preceding two years, the number of prisoners, where confined, and the cost of their maintenance, together with a statement of the condition of the territorial penitentiaries or prisons, said board shall also in said report submit an estimate of the amount of money needed by it for the next two years. [S. L. 1882, ch. 76, § 12.]

When sheriff to transport prisoners.

SEC. 1789. In case the territorial prisoners are, under the contract or contracts made by the board of penitentiary commissioners, to be transported to the penitentiary or penitentiaries or prisons, designated and selected for the confinement of such prisoners, by and at the expense of the territory, then and in that case the sheriffs of the various counties shall be employed by the board to transport such prisoners convicted in their counties respectively; *Provided*, Said sheriffs will perform such service at a price or compensation not exceeding the price or compensation for which such service can otherwise be obtained by said board. [S. L. 1882, ch. 76, § 13.]

Prisoners in Nebraska penitentiary.

SEC. 1790. The state penitentiary of the State of Nebraska, located at Lincoln, in the State of Nebraska, is hereby declared to be a territorial penitentiary of the Territory of Wyoming, for the confinement of all convicts of said Territory of Wyoming who have heretofore been sentenced to confinement there. [S. L. 1879, ch. 80, § 1.]

TITLE 33. OFFICERS—COUNTY.*

CHAPTER 1. COUNTY COMMISSIONERS.
CHAPTER 2. JUDGE OF PROBATE AND TREASURER.
CHAPTER 3. CLERK AND REGISTER OF DEEDS.
CHAPTER 4. SHERIFF.
CHAPTER 5. ASSESSOR.
CHAPTER 6. CORONER.
CHAPTER 7. SURVEYOR.
CHAPTER 8. COUNTY AND PROSECUTING ATTORNEY.
CHAPTER 9. SUPERINTENDENT OF SCHOOLS.
CHAPTER 10. JUSTICES OF THE PEACE AND CONSTABLES.
CHAPTER 11. MISCELLANEOUS PROVISIONS.

CHAPTER 1.

COUNTY COMMISSIONERS.

SECTION.
1791. Enumerated powers of counties.
1792. County property.
1793. Powers of county exercised by commissioners.
1794. County buildings.
1795. Name in which county shall sue and be sued.
1796. Service of process against counties.
1797. Restrictions upon employment of attorneys.
1798. Judgment against county to be paid by tax levy.
1799. Commissioners—Term of office—Oath—Bond—Quorum.
1800. Regular and special meetings.
1801. Enumerated powers of commissioners.
1802. County seal—Meetings to be public.
1803. Selection of chairman.
1804. Commissioners may administer oaths.

SECTION.
1805. Claims against county to be itemized and verified.
1806. Penalty for violating last section.
1807. Attestation of county orders.
1808. Appeal on disallowance of claim.
1809. Notice of appeal to county attorney.
1810. County officers to be provided with stationery, etc.
1811. Publication of semi-annual statements.
1812. Penalty for neglect of duty.
1813. Term of appointed commissioner.
1814. Publication of commissioners' proceedings
1815. Delinquent tax list to be published.
1816. Notice of election to be published.
1817. Official paper.
1818. Legal advertising, to be in brevier type, etc.
1819. Rates of advertising prescribed.

Enumerated powers of counties.

SEC. 1791. Each organized county within the territory shall be a body corporate and politic, and as such shall be empowered for the following purposes:

First—To sue and be sued;

Second—To purchase and hold real and personal estate for the use of the county and land sold for taxes, as provided by law;

Third—To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants;

Fourth—To make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate or administrative powers;

Fifth—To exercise such other and further powers as may be especially conferred by law. [C. L. 1876, ch. 28, p. 202, § 1.]

County property.

SEC. 1792. Any real or personal estate heretofore conveyed, or which may be hereafter conveyed to any county, shall be deemed the property of such county. [C. L. 1876, ch. 28, p. 202, § 2.]

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*For road supervisor, see § 3875.

Powers of county exercised by commissioners.

SEC. 1793. The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners. [C. L. 1876, ch. 28, p. 202, § 3.]

County buildings.

SEC. 1794. Each county organized for judicial purposes shall, at its own expense, provide a suitable court house and a sufficient jail and other necessary county buildings and keep them in repair. [C. L. 1876, ch. 28, p. 202, § 4.]

Name in which county shall sue and be sued.

SEC. 1795. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued, shall be "the board of the county commissioners of the County of ———," but this provision shall not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county. [C. L. 1876, ch. 28, p. 202, § 5.]

Service of process against counties.

SEC. 1796. In all legal proceedings against the county, process shall be served on said board of county commissioners or any member thereof, and they shall have the right and are authorized in the absence of the county attorney, to employ an attorney to prosecute or defend, for which they may make an appropriation out of the general county fund. [C. L. 1876, ch. 28, p. 202, § 6.]

Restrictions upon employment of attorneys.

SEC. 1797. No fee or allowance shall be given to any attorney by any board of county commissioners for any services not required by law, and if any attorney shall be employed by such board under the provisions of this chapter, the nature and necessity of such employment shall appear in the record of the board. [S. L. 1879, ch. 8, § 2.]

Judgment against county to be paid by tax levy.

SEC. 1798. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him or them in his or their name of office, where the same shall be payable by the county, no execution shall issue upon said judgment, but said judgment shall be paid by a tax levied and collected for that purpose as in the case of other county charges, and when so collected shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor; *Provided*, That execution may issue on said judgment if payment be not made within sixty days after the time required for the payment of county taxes to the county treasurer by the proper officers of said county, in each year. [C. L. 1876, ch. 28, p. 203, § 7.]

Commissioners—Term of office—Oath—Bond—Quorum.

SEC. 1799. The board of county commissioners shall consist of three qualified electors, and who shall hold their offices for two years and until their successors are appointed, or elected, and qualified according to law, and each person elected as such commissioner, shall, on receiving a certificate of his election, take an oath to support the constitution of the United States and the organic act of this territory, and to perform the duties of his office to the best of his ability, which oath being indorsed upon said certificate under the hand of the proper officer administering it, shall be filed by the judge of probate, and each of said commissioners shall also give bond to the people of the Territory of Wyoming in the sum of one thousand dollars, and upon the same being approved and filed by the judge of probate, they or any two of them having filled the requirements of this section, shall be qualified to act as such commissioners, any two of whom shall be competent to transact business. [C. L. 1876, ch. 28, p. 203, § 8.]

Regular and special meetings.

SEC. 1800. The board of county commissioners of each county shall meet at the county seat of their respective counties on the first Monday in January, May, July and October in each year, and at such other times as in the opinion of the board the public interest may require, or that may be required by any existing provisions of law. Such commissioners may sit four days or longer at each regular session, and two days at each special or called session, but shall not receive any compensation for any length of time over four days at regular sessions. The board of county commissioners shall not sit oftener than once in three months, except when it may be necessary to do so for the purpose of providing for the drawing of juries, or to comply with the provisions of the laws relating to the assessment, levy and collection of taxes, or when in their discretion it may be necessary to meet for the transaction of urgent county business; *Provided*, That in counties having more than four thousand inhabitants, the county commissioners shall meet on the first Tuesday of each month, and shall have power to call special meetings when a majority of the board deem it necessary. [C. L. 1876, ch 28, p. 203, § 9. S. L. 1884, ch. 42, § 1.]

Enumerated powers of commissioners.

SEC. 1801. The board of county commissioners of each county shall have power at any meeting:

First—To make such orders concerning the property belonging to the county as they may deem expedient;

Second—To examine and settle all accounts of the receipts and expenses of the county, and to examine, settle and allow all accounts chargeable against the county, and, when so settled and allowed, they may issue county orders therefor as provided by law;

Third—To build and keep in repair county buildings, and, if thought advisable, to cause the same to be insured in the name of the county treasurer, for the benefit of the county, and, in case there are no county buildings, to provide suitable rooms for county purposes;

Fourth—To apportion and order the levying of taxes as provided by law;

Fifth—To represent the county and have the care of the county property and the management of the business and concerns of the county, in all cases where no other provision is made by law;

Sixth—To establish election precincts at such places in the county as the convenience of the inhabitants may require;

Seventh—To lay out, alter or discontinue any road running through the county, and also to perform such other duties respecting roads as may be required by law;

Eighth—To grant licenses for keeping ferries, toll bridges and toll gates as may be prescribed by law;

Ninth—To perform such other duties as are or may be prescribed by law. [C. L. 1876, ch. 28, p. 203, § 11.]

County seal—Meetings to be public.

SEC. 1802. Every board of county commissioners shall have a seal, or scroll, until a seal can be procured, and may alter the same at pleasure; they shall sit with open doors, and all persons conducting themselves in an orderly manner may attend their meetings, and they may establish rules and regulations to govern the transaction of their business. [C. L. 1876, ch. 28, p. 204, § 12.]

Selection of chairman.

SEC. 1803. They shall, at the first meeting after their election, or appointment, choose one of their number chairman, who shall preside at all meetings when present, and in case of his absence either one of the other members may act as temporary chairman. [C. L. 1876, ch. 28, p. 204, § 13.]

Commissioners may administer oaths.

SEC. 1804. Each member of said board is authorized to administer oaths within his county. [S. L. 1884, ch. 29, § 2.]

Claims against county to be itemized and verified.

SEC. 1805. No account shall be allowed by the board of county commissioners unless the same shall be made out in separate items, properly dated and the value of each item specifically described, and when no specified fees are allowed by law the date that such services were rendered and the time actually and necessarily devoted to the performance of any service charged in such account shall be specified, which account so made out shall be verified by affidavit, setting forth that said account is just and correct, and that the whole or no part of the same has been paid by the county or any individual; *Provided*, Nothing in this section shall be construed to prevent the board of county commissioners from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as they may think proper. [S. L. 1879, ch. 32, § 1.]

Penalty for violating last section.

SEC. 1806. For any violation of the preceding section the board of county commissioners shall be held responsible on their official bonds to the full amount of any account so allowed, to be recovered in an action of debt for the use of the proper county, should the evidence show that the whole or any part of any account has been allowed by any board of county commissioners contrary to the provisions of the preceding section. [S. L. 1879, ch. 32, § 2.]

Attestation of county orders.

SEC. 1807. County orders shall be signed by the chairman and attested by the clerk under the seal of the county, and shall specify the nature of the claim or service for which they were issued. [C. L. 1876, ch. 28, p. 205, § 16.]

Appeal on disallowance of claim.

SEC. 1808. When any claim of any person against a county shall be disallowed, in whole or in part, by the board of commissioners, such person may appeal from the decision of such board to the district court for the same county, by causing a written notice of such appeal to be served on the clerk and chairman of such board within ten days after making such decision, and by executing a bond to such county with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant. [C. L. 1876, ch. 28, p. 205, § 17.]

Notice of appeal to county attorney.

SEC. 1809. The clerk of the board, upon such appeal being perfected as above required, shall immediately give notice thereof to the county attorney, if there be one, and shall make out a brief return of the proceedings in such case before the board, with their decision thereon properly certified, and shall file the same, together with the bond and all the papers in the case in his possession, with the clerk of the district court, and such appeal shall be entered, tried and determined the same as appeals from justices' courts, and costs shall be awarded in like manner. [C. L. 1876, ch. 28, p, 205, § 18.]

County officers to be provided with stationery, etc.

SEC. 1810. The board of commissioners of their respective counties shall, at the expense of the county, furnish annually and in due season to the assessor and collector of the county, suitable blank books and blanks necessary for their respective offices, and prepared in accordance with law, and shall also provide suitable books and stationery for the use of each of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents and papers belonging to each of said officers, and also official seals for each of said officers, when the same are required by law. [C. L. 1876, ch. 28, p. 205, § 19.]

Publication of semi-annual statements.

SEC. 1811. The board of commissioners of the respective counties, at their regular meetings, to be held in January and July in each year, shall cause to be prepared a statement of the receipts and expenditures of such county during the six months immediately preceding, setting forth the amount of money received, and for what it has been received, setting forth also the amount expended, and the particular objects for which, in each case, every sum of money has been expended, and such statement, signed by the chairman and clerk of the board, shall be published at least three times in some newspaper printed in the county, or, if there be none, by posting such statement in three public places in the county. [C. L. 1876, ch. 28, p. 205, § 20.]

Penalty for neglect of duty.

SEC. 1812. If any commissioner shall refuse or neglect to perform any of the duties which are, or shall be, required of him by law as a member of the board of county commissioners, without just cause therefor, he shall, for each offense, forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars. [C. L. 1876, ch. 28, p. 205, § 21.]

Term of appointed commissioner.

SEC. 1813. Every person appointed county commissioner shall hold his office until the general election, and until his successor shall be qualified, and enter upon the duties of his office. [C. L. 1876, ch. 28, p. 206, § 23.]

Publication of commissioners' proceedings.

SEC. 1814. The board of county commissioners of the several counties of Wyoming shall cause the entire proceedings of all regular and special meetings held by said board of commissioners to be published one time, in some newspaper published in said county, if there be one, and the county clerk of each county shall, within forty-eight hours after the adjournment of every meeting, furnish said paper with a copy of the proceedings of said meeting; said proceedings shall contain an account of every bill presented to said board, showing the amount of the bill, the amount allowed and what the bill is for, and by whom presented; the said board of commissioners shall, when practicable, publish a notice of the time of all regular and special meetings. [S. L. 1877, p. 92, § 1]

Delinquent tax list to be published.

SEC. 1815. The board of county commissioners of the several counties shall cause the delinquent tax list of their respective counties, as soon as the same become delinquent, to be published in some newspaper published in said county for three times, if there be one; if there be no paper, the same shall be posted in three conspicuous places in said county, or published in some newspaper having the largest *bona fide* circulation in said county; said tax list shall show the amount of tax, with the amount of penalty for delinquent and the total tax to be paid. [S. L. 1877, ch. 93, § 2.]

For delinquent tax list, see § 3820.

Notice of election to be published.

SEC. 1816. The board of county commissioners shall cause a notice of all regular and special elections, giving the place for holding the polls in each precinct, together with the names of the judges appointed, for four weeks in some newspaper published in said county, if there be one. [S. L. 1877, p. 93, § 5.]

Official paper.

SEC. 1817. When there is more than one paper published in any county the board of county commissioners shall designate which shall be the official paper of the county. [S. L. 1877, p. 93, § 6.]

Legal advertising to be in brevier type, etc.

SEC. 1818. All county and legal advertisements provided for under this chapter, or otherwise, shall be set in solid brevier type. [S. L. 1877, p. 93, § 7.]

Rates of advertising prescribed.

SEC. 1819. For all county and legal advertising, rates to be charged in all cases shall be as follows: For the proceedings of the board of county commissioners and the grand jury's report, which shall be published but one time, fifty cents per square. All other local and legal advertising shall be paid for as follows: If published four weeks or more in a weekly paper, one dollar per week per square; for daily newspapers, one dollar per square for first insertion and fifty cents per square for each additional insertion. [S. L. 1877, p. 93, § 8.]

CHAPTER 2.

JUDGE OF PROBATE AND TREASURER.

SECTION.
1820. Probate judge to be treasurer—Term of office—Oath and bond.
1821. Treasurer to be collector of taxes—Bond.
1822. Probate record.
1823. Jurisdiction as justice of the peace.
1824. General duties of treasurer.
1825. Receipt and disbursement of money.
1826. Treasurer's accounts—Annual settlement.
1827. Order in which warrants paid.
1828. Settlement of treasurer after removal, etc.
1829. Warrants to be countersigned and registered.
SECTION.
1830. Restrictions upon countersigning warrants.
1831. Registration of county warrants.
1832. Settlement with territorial treasurer.
1833. Malfeasance of treasurer—Penalty.
1834. Officers to pay money to treasurer in thirty days.
1835. Deputy treasurer—Appointment, etc.
1836. "Cash book" to be kept by treasurer.
1837. Form of treasurer's receipts.
1838. Further duties of treasurer.
1839. Neglect of duty by treasurer—Penalty.

Probate judge to be treasurer—Term of office—Oath and bond.

SEC. 1820. There shall be a judge of probate for each county, who shall hold his office for two years and until his successor is elected and qualified, and who shall be *ex-officio* justice of the peace and county treasurer of his county, and who shall, before he enters upon the duties of his office, take an oath to support the constitution of the United States and the organic act of the Territory of Wyoming, that he will perform the duties of his office as enjoined upon him by law, and shall also execute to said territory a bond in the penal sum of ten thousand dollars, with two or more sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties required of him by law as such judge of probate, *ex-officio* justice of the peace and county treasurer, and for the faithful application and payment of all moneys and effects that may come into his hands in execution of the duties required of him by law, as such judge of probate and *ex-officio* justice of the peace and treasurer. [C. L. 1876, ch. 28, p. 206 § 1.]

Treasurer to be collector of taxes—Bond.

SEC. 1821. The county treasurer shall also be the collector of taxes in his county, and he shall at the same time, execute another bond to the people of the Territory of Wyoming, in such penal sum as may be prescribed by the board of county commissioners, conditioned that if said treasurer, as collector, and his deputy or deputies, and all persons employed in his office, shall faithfully and promptly perform the duties required of collector by the laws of this territory, to the satisfaction of the board of county commissioners, and if he, the said treasurer, and his deputies, shall collect and pay according to law, to the proper officer or person, all moneys which shall come to his hands as county collector, and shall render a just and true account thereof whenever so required by the board of county commissioners or any provisions of law, and shall deliver to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers and other things appertaining thereto, or belonging to his office, said bond shall be null and void, otherwise to remain in full force and effect, which said bond, together with the certificate of his election or appointment, shall be filed in the county clerk's office, and no person shall be received as a surety on said bond who is not worth at least two thousand dollars over and above his just debts and exemptions provided by law. [C. L. 1876, ch. 28, p. 211, § 1. S. L. 1882, ch. 45, § 7.]

Probate record.

SEC. 1822. The judge of probate shall keep a record of all probate business done by, or before him, in the manner and as provided by law, which record shall be open to the inspection of all persons, and shall perform the duties of his office as prescribed by law. He shall receive such fees for probate business as shall be allowed by law. [C. L. 1876, ch. 28, p. 206, § 2.]

Jurisdiction as justice of the peace.

SEC. 1823. The judge of probate as *ex-officio* justice of the peace, shall have the same civil and criminal jurisdiction as other justices of the peace, and be in all respects subject to the same requirements and penalties prescribed by law, and shall be allowed the same fees as justices of the peace. [C. L. 1876, ch. 28, p. 206, § 3.]

General duties of treasurer.

SEC. 1824. The judge of probate, as county treasurer, shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office as such treasurer, and shall perform all duties required of him by any provisions of the laws of this territory. [C. L. 1876, ch. 28, p. 206, § 4.]

Receipts and disbursements of money.

SEC. 1825. The judge of probate, as county treasurer, shall receive all moneys belonging to the county and territory, from whatsoever source they may be derived, and all other moneys which may be directed by law to be paid to him. All moneys received by him for the use of the county, shall be paid out by him only on the orders, or warrants, issued by the board of county commissioners as prescribed by law, except where special provisions for the payment thereof shall be otherwise made by law. [C. L. 1876, ch. 28, p. 207, § 5.]

Treasurer's accounts—Annual settlement.

SEC. 1826. The said treasurer shall keep a just and true account of the receipts and expenditure of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners or any member thereof, and to all county and territorial officers, or any citizen desiring to inspect the same, and at the annual meeting of the first Monday in January of each year of the said board of county commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, for the preceding year, and for that purpose he shall exhibit to them all his books and accounts and all the vouchers relating to the same, to be audited and allowed; he shall also make a report at each regular meeting of said commissioners of the amount of moneys received and expended by him as such treasurer during the intervening time, if so required. [C. L. 1876, ch. 28, p. 207, § 6.]

Order in which warrants paid.

SEC. 1827. County orders, or warrants properly attested, shall be entitled to a preference as to payment, according to date of presentation and acceptance at the treasurer's office, the oldest date to have the preference; but every county treasurer shall receive from the county collector in payment of county taxes, county orders issued in said county, unless restricted from so doing by some provision of law. [C. L. 1876, ch. 28, p. 207. § 7.]

Settlement of treasurer after removal, etc.

SEC. 1828. Upon the resignation or removal from office of any county treasurer, all the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of such preceding treasurer or, in case of his death, upon oath of his executors and administrators. If any such preceding treasurer, or in case of his death, if his executors or administrators shall neglect or refuse to deliver up such books, papers and moneys, on oath, when lawfully demanded, every such person shall forfeit a sum of not less than one hundred dollars, nor more than five hundred dollars, and be also liable upon his official bond for such refusal or neglect. [C. L. 1876, ch. 28, p. 207 § 8.]

Warrants to be countersigned and registered.

SEC. 1829. In all cases where county orders are drawn by the county clerk of any county in this territory, upon the treasurer of such county, and properly signed by the chairman of the board of county commissioners, the said orders before they are delivered to the person or persons for whose benefit the same are drawn, shall be severally presented by the said clerk to the county treasurer, who shall personally countersign the same, and shall also enter in a book to be kept by him for that purpose, the date, amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn respectively. [C. L, 1876, ch. 28, p. 207, § 9.]

Restrictions upon countersigning warrants.

SEC. 1830. No county treasurer shall countersign any county order before the same is filled up, nor until he shall be satisfied that the order presented to him so to be countersigned, was duly ordered to be drawn by said board of county commissioners. [C. L. 1876, ch. 28, p. 208, § 10.]

Registration of county warrants.

SEC. 1831. Every county treasurer shall have and keep in his office a book to be called the register of county orders, wherein shall be entered and set down at the date of the presentation thereof, and without interval or blank line between any such entry and the one preceding it, every county order or other certificate or evidence of county indebtedness at any time presented to such county treasurer for payment, whether the same is paid at the time of presentation or not, the date and number of such order, the amount for which the same is payable, the date of the presentation thereof, the name of the person to whom such order is by the terms thereof payable, and the name of the person presenting the same. Every such register of county orders shall, at all reasonable hours, be opened to the inspection and examination of any person desiring to inspect or examine the same. [C. L. 1876, ch. 28, p. 208, § 11.]

Settlement with territorial treasurer.

SEC. 1832. Every county treasurer shall pay over to the territorial treasurer, all territorial taxes and other moneys received by him from the county collector on account of the territory, in the same kind of funds in which the same shall be received, and, together with all such moneys, every county treasurer shall deliver to the treasurer of the territory a statement in writing that he has paid over the same funds in kind as received by him, and that he has not exchanged or bartered any of the moneys, coin, bank bills, treasury notes or other currency received by him on account of the territory for any auditor's warrants, territorial scrip or other certificates or evidences of indebtedness of the territory, nor caused nor permitted the same to be done, and that all such territorial auditor's warrants or other certificates or evidences of indebtedness of the territory, so by him delivered to the treasurer, were received by him from the county collector in payment of territorial taxes or other moneys due the territory. Every such statement shall be sworn to before any person authorized to administer oaths, and by him filed and preserved in his office, and false swearing in such statement shall be deemed perjury. [C. L. 1876, ch. 28, p. 208, § 12.]

Malfeasance of treasurer—Penalty.

SEC. 1833. Every county treasurer who shall fail, neglect or refuse to keep in his office such register of county orders as required by section eighteen hundred and thirty-one, or shall fail, neglect or refuse, to enter therein, at the time of the presentation thereof, every county order which may be presented to him for payment, or shall make any false entry thereof, or shall fail, neglect or refuse to pay any order presented to him for payment, there being then money in the treasury appropriated for that purpose, or from which by law the same ought to be paid; every county treasurer so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than fifty dollars and not more than five hundred dollars, and the court may adjudge that such treasurer be removed from his office. This section shall extend to the deputy of every such county treasurer. [C. L. 1876, ch. 28, p. 208, § 13.]

Officers to pay money to treasurer in thirty days.

SEC 1834. Every county clerk, clerk of the district court, district attorney, sheriff, constable, justice of the peace, or other territorial or county officer by law appointed, required or permitted to receive and pay over to the county treasurer any taxes, fines, fees or other moneys whatsoever, shall, within thirty days after the receipt of such moneys, pay the same over to the county treasurer in the same kind of gold or silver coin, or in the same kind of United States treasury notes, bank bills, county warrants, county orders, county scrip, certificates of indebtedness or other evidences of indebtedness whatsoever, in which the same were by such officer received, and together therewith, such officer so paying over the same, shall deliver to such treasurer a statement in writing of the amount of such moneys so collected by him and paid over as aforesaid, the kind of moneys or evidences of debt, whether gold coin, silver coin, United States bond or treasury notes, bank bills, county orders, county scrip, auditor's warrants, territorial warrants, or other certificates or evidences of indebtedness of the territory or any county, or any person, or corporation, in which the same and every part thereof were by him received, which statement shall be signed by the person paying the same, and sworn to before such treasurer, and by him filed and preserved in his office. Every person falsely swearing in any such statement shall be decided guilty of perjury. The county treasurer shall not demand or receive any fee for administering the oath required by this section. [C. L. 1876, ch. 28, p. 208, § 14.]

Deputy treasurer—Appointment, etc.

SEC. 1835. The county treasurer may appoint a deputy for whose official acts he shall be responsible, and who shall take the oath heretofore prescribed, with such changes as may be necessary, and who shall give bond to such treasurer for the faithful performance of all duties required of him, in such sum and manner as said treasurer may require, and such deputy shall hold his office during the pleasure of such treasurer. [C. L. 1876, ch. 28, p. 209, § 15.]

"Cash book" to be kept by treasurer.

SEC. 1836. Every treasurer as county collector shall have and keep in his office, a "cash book," wherein shall be entered and set down every sum of money paid to him by virtue of his office, and the date of such payment, and the name of the person paying the same, the account upon which the same was paid, and the nature of the funds so paid to him, whether gold, silver, United States treasury notes, bank bills, or territorial or auditor's warrants or other territorial or county scrip, or evidences of territorial or county indebtedness, and the amount of each separate kind; and such cash books shall, at all reasonable hours of the day, be open to the inspection and examination of all persons desiring to inspect or examine the same. [C. L. 1876, ch. 28, p. 213, § 8.]

Form of treasurer's receipts.

SEC. 1837. Upon the payment of any money to him as aforesaid, he shall issue his receipt therefor to the person paying the same, setting forth in such receipt all of the matters prescribed in the preceding section, to be entered in such cash book. [C. L. 1876, ch. 28, p. 213, § 9.]

Further duties of treasurer.

SEC. 1838. Every treasurer, as treasurer and collector, shall faithfully perform all other duties required of him by the laws of this territory, in addition to those specified in this chapter. [C. L. 1876, ch. 28, p. 213, § 10.]

Neglect of duty by treasurer—Penalty.

SEC. 1839. Every treasurer as county collector, who shall fail, neglect or refuse to have and keep in his office such cash book as required by section eighteen hundred and thirty-six, or shall fail, neglect or refuse to set down, in said cash book, each and every requirement as set forth in said section, or shall make any false or deficient entry thereof, or shall fail, neglect or refuse to have and keep said cash book at his office during business hours, or shall fail, neglect or refuse to permit any person to inspect or examine the same, at any reasonable hour of the day, or shall fail, neglect or refuse to issue his receipt for any moneys collected or received by him, as such collector, as required in section eighteen hundred and thirty-seven, or shall fail to collect and pay over any moneys required to be collected and paid over, or shall fail, neglect or refuse to do any other official act required of him by law; shall, in addition to other penalties that may be prescribed by law, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars nor more than five hundred dollars, and the court may, as an additional penalty, adjudge that such treasurer be removed from his office. This section shall extend to the deputies of every such treasurer. [C. L. 1876, ch. 28, p. 213, § 11.]

CHAPTER 3.

CLERK AND REGISTER OF DEEDS.

SECTION.
1840. Term of office—Oath or bond.
1841. Deputy clerk—Appointment, etc.
1842. General duties of clerk.
1843. Duties in recording proceedings of commissioners.
1844. Duties in filing accounts and issuing warrants.
1845. Duties as register of deeds.
1846. Indices to be kept by register.
1847. Receiving book.
1848. Certified copies as evidence.
SECTION.
1849. Abstract books to be kept in each county.
1850. Abstract of existing transfers and liens.
1851. Clerk to abstract conveyances, etc.—Fees.
1852. Form of abstract books.
1853. Separate abstract of town lots.
1854. Abstract books to be public.
1855. Sweetwater County abstracts.
1856. Sweetwater County abstracts to be perfected.
1857. Restoring lost records in Sweetwater County.

Term of office—Oath and bond.

SEC. 1840. There shall be a county clerk for each county of this territory, who shall be elected or appointed for two years and who shall be *ex-officio* register of deeds. He shall, before he enters on the duties of his office, execute and file with the judge of probate a bond with two or more sufficient sureties in the penal sum of not less than four thousand dollars, to be approved by the board of county commissioners, conditioned that he will faithfully perform all the duties of his office as county clerk and *ex-officio* register of deeds, and pay all moneys that may come into his hands by virtue of his office, as required by law, and deliver to his successor in office all the books, records, papers and other things belonging to his said office. He shall also take an oath to support the constitution of the United States and the act organizing the Territory of Wyoming and that he will faithfully discharge the duties of county clerk and *ex-officio* register of deeds as required by law, which said oath shall be indorsed upon the back of his certificate of election or appointment, and shall be filed with his bond. [C. L. 1876, ch. 28, p. 209, § 1.]

Deputy clerk—Appointment, etc.

SEC. 1841. Every such clerk may appoint a deputy in writing, under his hand, and said deputy shall act as such during the pleasure of said clerk, and he shall file such appointment, with the necessary oath indorsed on the back of the same, with the judge of probate, and in case of the absence or disability of such clerk, said deputy shall perform the duties of such office and may at all times sign the name of such clerk officially by himself as such deputy, when required so to do by any provision of law. Said clerk may require such deputy to enter into bonds to him to faithfully perform the several duties of his office, and such clerk and his securities on his official bond shall be responsible for all official acts performed by such deputy. [C. L. 1876, ch. 28, p. 209, § 2.]

General duties of clerk.

SEC. 1842. The county clerk shall keep his office at the county seat; he shall attend the sessions of the board of county commissioners, either in person or by deputy, keep the seals, records and papers of the said board of county commissioners and keep a record of the proceedings of said board in a book, as required by law. He shall also keep a book in which shall be entered all licenses except marriage licenses, giving the names of the persons to whom such licenses are issued, with the date, amount and for what the same was issued; he shall also keep a book of blank county orders or warrants, with a margin in proper blank, which blank margin shall be properly filled before any warrant shall be delivered, and no warrant shall be delivered by such clerk or his deputy until properly signed by the chairman of the board of county commissioners, attested by such clerk under the county seal, and be presented to the county treasurer to be countersigned. [C. L. 1876, ch. 28, p. 210, § 3.]

Duties in recording proceedings of commissioners.

SEC. 1843. It shall be the general duty of the clerk of the board of county commissioners:

First—To record in a book to be provided for that purpose, all proceedings of the board;

Second—To make regular entries of all their resolutions, orders and decisions on all questions coming before them;

Third—To sign all orders issued by the board for the payment of money; and he shall preserve and file all accounts acted upon by the board with their action thereon, and he shall perform such special and other duties as may be required of him by law. [C. L. 1876, ch. 28, p. 210, § 4.]

Duties in filing accounts and issuing warrants.

SEC. 1844. It shall be the duty of such clerk to designate upon every account which shall be audited and allowed by the board, the amount so allowed, and he shall file such accounts as well as those not allowed, keeping the two separate; and such clerk shall not sign or issue any county order unless ordered by the board of commissioners authorizing the same, and every such order or warrant shall be numbered. [C. L. 1876, ch. 28, p. 210, § 5.]

Duties as register of deeds.

SEC. 1845. The county clerk as *ex-officio* register of deeds, shall have custody of, and safely keep and preserve, all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record, or cause to be recorded, in a plain and distinct hand writing, in suitable books to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law in relation thereto. [C. L. 1876, ch. 28, p. 210, § 7.]

Indices to be kept by register.

SEC. 1846. Every register of deeds shall keep a general index, direct and inverted, in his office, he shall make correct entries in such general index, of every instrument recorded concerning or affecting real estate, under appropriate headings, entering the names of the grantors and grantees in alphabetical order. He shall make in such general index or indices correct entries of every instrument required by law to be entered in the general index or indices direct. And whenever any mortgage, bond or other instrument has been released or discharged from record, whether by written release upon the margin of the record, or by recording a deed of release, the register shall immediately note in the appropriate index, both under the head of grantor and grantee, and in the column headed "remarks," and opposite to the appropriate entry, that such instrument has been satisfied. [C. L. 1876, ch. 28, p. 211, § 8.]

Receiving book.

SEC. 1847. He shall also keep a receiving book, each page of which shall be divided into six columns, specifying the time of reception, the names of grantors, the names of grantees, from whom received, to whom delivered, and fees received. Whenever any instrument has been received by him for record, he shall immediately indorse upon such instrument his certificate, noting ~~the day~~, hour, and minute, of its reception, the book and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of filing; whenever any instrument has been filed as aforesaid, the register shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fee for recording the same, and after such instrument is recorded, he shall deliver it to the person authorized to receive the same, writing the name of the person to whom it is delivered in the appropriate column; but no register of deeds shall be bound to perform any of the duties required to be performed by this chapter as such register, for which a fee is allowed, unless such fee has been paid or tendered. [C. L. 1876, ch. 28, p. 211, § 9.]

Certified copies as evidence.

SEC. 1848. Copies of all papers filed in the office of register of deeds, and transcripts from the books of record kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases. [C. L. 1876, ch. 28, p. 211, § 10.]

Abstract books to be kept in each county.

SEC. 1849. In each county in the territory there shall be abstract books kept, in which all transfers and mortgages of real property, and all liens upon real estate shall be briefly entered. The board of county commissioners of each county shall provide proper abstract books. [C. L. 1876, ch. 1, § 1.]

Abstract of existing transfers and liens.

SEC. 1850. It shall be the duty of the county clerk of each county, to enter in dark colored ink in such abstract book in the order of time, all transfers of real estate heretofore recorded in their respective offices; and all mortgages, mechanics' liens, and judgment liens, shall also be entered in said books in the order of time, in red ink. The clerk shall receive therefor reasonable compensation for each entry when it is properly abstracted, the same to be paid out of the county funds. [C. L. 1876, ch. 1, § 2.]

Clerk to abstract conveyances, etc.—Fees.

SEC. 1851. All instruments affecting real estate in this territory, left for record in the county clerk's office, shall be abstracted as soon as it is practicable to enter the same, in the order of time; and it shall be lawful for the county clerk to charge each person, having such an instrument recorded, the sum of twenty-five cents, to be known as the abstract fee. [C. L. 1876, ch. 1, § 3.]

Form of abstract books.

SEC. 1852. All abstract entries of lands shall be made in a book, well bound and properly ruled, and at the head lines shall describe the legal division of land, or sub-division, naming section, township and range, according to the United States surveys, when the same is so described in the instrument filed for record; and the book shall contain ruled parallel columns, in which respectively shall be entered the name of the grantor or mortgagor, grantee or mortgagee, character of instrument, consideration expressed in instrument, date of instrument, date of filing in clerk's office, description of the premises, and such other pertinent marginal remarks as will show whether such instrument was properly witnessed and acknowledged, or not. [S. L. 1876, ch. 1, § 4.]

Separate abstract of town lots.

SEC. 1853. All abstract entries of town lots shall be made in a similar manner to those of lands, but shall be in a separate book, to be provided for that purpose by the board of county commissioners; and the clerk shall be entitled to receive the same pay from the county for abstracting all lots heretofore recorded, and to charge the same abstract fees to parties hereafter having instruments recorded affecting real property in any surveyed or incorporated town or city that is herein authorized, for instruments affecting lands. The number of the lot and block shall appear in the head lines. [C. L. 1876, ch. 1, § 5.]

Abstract books to be public.

SEC. 1854. All abstract books shall be open to the inspection of every person desiring to examine the same, during all reasonable office hours, and no fee shall be charged for their inspection by any officer. [C. L. 1876, ch. 1, § 6.]

Sweetwater County abstracts.

SEC. 1855. The county commissioners of Sweetwater County are authorized in their discretion to provide proper abstract books in which all transfers and mortgages of real property, and all liens upon real estate, shall be briefly kept. [S. L. 1884, ch. 91, § 1.]

Sweetwater County abstracts to be perfected.

SEC. 1856. The county commissioners of Sweetwater County may authorize the county clerk and *ex-officio* register of deeds to enter in such abstract books in the order of time, all such transfers of real estate heretofore recorded in the office of the county clerk of Sweetwater County, commencing on the tenth day of August, A. D. eighteen hundred and seventy, to the first day of January, A. D. eighteen hundred and eighty three, inclusive. The recorder shall receive therefor a reasonable compensation for each entry, where it is properly abstracted, the same to be paid out of the county funds. [S. L. 1884, ch. 91, § 2.]

Restoring lost records in Sweetwater County.

SEC. 1857. The county commissioners may advertise that all deeds recorded in book "E" deed record of Sweetwater County, between the tenth day of August, A. D. eighteen hundred and seventy, and the twenty-third day of December, A. D. eighteen hundred and seventy-four, be sent to the county clerk and *ex-officio* register of deeds for record, the said deed book having been lost, stolen or destroyed. The county clerk shall receive therefor such compensation as is now allowed by law for recording deeds, to be paid out of the county funds. [S. L. 1884, ch. 91, § 3.]

CHAPTER 4.

SHERIFF.

SECTION.
1858. Term of office—Oath and bond.
1859. Under-sheriff—Oath, etc.
1860. Deputy sheriffs—Appointment, etc.
1861. Deputy sheriffs in Albany County.
1862. Deputy sheriff and jailor in Johnson County.
1863. Special deputies—Appointment by commissioners.
1864. Control of specials—Revocation of appointments.
SECTION.
1865. Oath and compensation.
1866. Qualifications.
1867. Sheriff to have custody of jails.
1868. Process to be executed by sheriff and deputies.
1869. Sheriff and deputies to be peace officers.
1870. Service of process on sheriff.
1871. Further duties of sheriff.

Term of office—Oath and bond.

SEC. 1858. There shall be in each county organized for judicial purposes, a sheriff, who shall hold his office for the term of two years, and until his successor is elected and qualified, or appointed and qualified, as the case may be, and who shall, before he enters on the duties of his office, take an oath to support the constitution of the United States and the act organizing the Territory of Wyoming, and to faithfully discharge the duties imposed upon him by law as such sheriff, which said oath shall be indorsed on the back of his certificate of election or appointment, and he shall also execute a bond to the people of the Territory of Wyoming, with sufficient sureties, in the penal sum of four thousand dollars, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of sheriff as required by law, and that he will pay according to law, all moneys which shall come into his possession belonging to the territory, county school fund, or to any person or corporation, as such sheriff, and that he will render a just and true account thereof, and shall deliver to his successor in office or to any other person authorized by law to receive them, all moneys, books, papers, and other things appertaining thereto or belonging to his office as such sheriff. [C. L. 1876, ch. 28, p. 211, § 1. S. L. 1882, ch. 45, § 7.]

Under sheriff, oath, etc.

SEC. 1859. It shall be the duty of the sheriff to appoint an under sheriff, who shall qualify, as required by law of deputy sheriffs, and who shall be sheriff in case of the death, resignation, or other disability of the sheriff. [C. L. 1876, ch. 28, p. 212; § 2.]

Deputy Sheriffs—Appointment, etc.

SEC. 1860. The sheriff of each county, may, after entering upon the duties of his office, appoint in writing, one or more deputies to assist him in the performance of the duties required of him by law, as such sheriff, and for whose official acts he shall be responsible, and he may require each of such deputies to enter into bonds to him for the faithful performance of the several duties of his office; the written appointment of each deputy with the usual oath indorsed thereon, shall be filed in the county clerk's office of the proper county; each deputy shall hold his office during the pleasure of the sheriff, who shall, upon revoking the appointment of any deputy, indorse such revocation and the date thereof upon such written appointment, and shall also give ample notice of such revocation. Each sheriff may also appoint special deputies to do particular acts, which shall be specified in each of such appointments, and for each of whose official acts he shall be responsible, but such appointments are not required to be filed or revoked as in the case of regular deputies; *Provided*, That no assessor shall be appointed deputy sheriff or collector. [C. L. 1876, ch. 28, p. 212, § 3.]

Deputy sheriffs in Albany County.

SEC. 1861. The sheriff of Albany County may appoint two deputies, one to be located in the northern part of said county at the most convenient point, to be designated by the board of the county commissioners of said county, and who shall receive an annual salary of twelve hundred dollars, and the other to be located at or near Rock Creek station, or some other railway station west of Laramie, in said county, and who shall receive an annual salary of six hundred dollars; and such salary shall be in lieu of all fees and compensation, and shall be paid monthly by warrants of said county; *Provided*, That such deputies shall not receive said salaries until the board of county commissioners of said county shall so direct. [S. L. 1886, ch. 41, § 1.]

Deputy sheriff and jailor in Johnson County.

SEC. 1862. The sheriff of Johnson County shall be allowed one deputy sheriff, to be appointed by the sheriff, in addition to the deputy or under sheriff now provided by law, who shall receive as compensation for his services an annual salary of nine hundred dollars. The sheriff of said county shall also be entitled to a jailor to be appointed by the sheriff, who shall be janitor of the court house of said county. It shall be the duty of said jailor to guard and take care of the jail in the manner directed by the sheriff, and he shall receive a compensation for his services as jailor and janitor an annual salary of nine hundred dollars. The deputy sheriff provided for in this section shall be stationed in the northern portion of Johnson County, at such place as the sheriff of said county may designate. [S. L. 1886, ch. 30, § 1.]

Special deputies—Appointment by commissioners.

SEC. 1863. The board of county commissioners of each county shall have power, whenever extraordinary or unusual danger to life or property is threatened, or in progress on account of the unlawful acts or assembling of such numbers of persons that the regular county officers are unable to prevent the same, or whenever the said regular county officers are unable to quell any unlawful disturbance or assemblage, or whenever it shall be deemed necessary by said board, for the purpose of maintaining proper order or protection to life or property, or to prevent violation of law, to appoint as many persons as such board shall deem to be necessary, as special deputy sheriffs, who shall have all the authority given under the law to deputy sheriffs, for the purpose of quelling any actual or apprehended violence or disturbance, and arresting all offenders, and who shall act as such and hold such office until their appointment is revoked by said board of county commissioners. [S. L 1886, ch. 43, § 1.]

Control of specials—Revocation of appointment.

SEC. 1864. Such special deputy sheriffs shall, in the performance of their duties, unless otherwise ordered by the board, be subject to the instructions and orders of the sheriff of the county, and the board of county commissioners shall be sole judges of the necessity for the appointment of such special deputies, and of the time when the necessity for retaining them ceases to exist, and when, in the judgment of said board, all necessity for such special deputies has ceased to exist, the appointment shall be revoked; *Provided*, That, except in cases where such special deputy or deputies are acting under the orders of the sheriff of the county, the said sheriff shall not be held responsible for their acts; *And, provided further*, That nothing in this or the preceding section contained shall be construed as in any manner restricting the right of the sheriff to appoint such deputies as the laws of the territory may provide or authorize. [S. L. 1886, ch. 43, § 2.]

Oath and compensation.

SEC. 1865. Before entering upon the discharge of their duties such special deputies shall each take and subscribe an oath to faithfully discharge his duties, and such special deputies shall be paid out of the county treasury a sum not to exceed five dollars per day or night, all claims therefor to be presented, audited and allowed by the commissioners as in other cases; *Provided*, That in regulating the compensation to be paid as aforesaid, fractions of a day or night shall be computed as one day or night. [S. L. 1886, ch. 43, § 3.]

Qualifications.

SEC. 1866. Such special deputy sheriffs shall be citizens and electors of the territory, and the county in which they may be appointed, and their appointment may be revoked by the board at discretion. [S. L. 1886, ch. 43, § 4.]

Sheriff to have custody of jails.

SEC. 1867. The sheriff shall have charge and custody of the jails of his county, and of the provisions in the same, and shall keep them himself or by his deputy, or jailor whom he may appoint specially for that purpose, and for whose acts he and his sureties shall be liable. [C. L. 1876, ch. 28, p. 212, § 4.]

Process to be executed by sheriff and deputies.

SEC. 1868. The sheriff in person or by his deputy or deputies, shall serve and execute according to law, all processes, writs, precepts and orders issued out of any court of record in his county in all criminal and civil cases, or made by lawful authority and to him directed, except where otherwise expressly provided by law, and he shall attend upon all courts of record in his county. [C. L. 1876, ch. 28, p. 213, § 5. S. L. 1879, ch. 60, § 1.]

Sheriff and deputies to be peace officers.

SEC. 1869. It shall be the duty of the sheriff and deputy sheriffs to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections, for which purpose and for the service of process in civil and criminal cases, and in apprehending and securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary. [C. L. 1876, ch. 28, p. 213, § 6.]

Service of process on sheriff.

SEC. 1870. Every paper required by law to be served on the sheriff, may be served on him in person or left at his office during business hours, and no sheriff or deputy shall appear or advise as attorney or counsellor in any case in any court. [C. L. 1876, ch. 28, p. 213, § 7.]

Further duties of sheriff.

SEC. 1871. Every sheriff, shall faithfully perform all other duties required of him by the laws of this territory, in addition to those specified in this chapter. [C. L. 1876, ch. 28, p. 213, § 10.]

CHAPTER 5.

ASSESSOR.

SECTION.
1872. Term of office and oath.
1873. Bond and action thereon.

SECTION.
1874. Deputy assessor—Appointment, etc.
1875. Assessor to pay deputies.

Term of office and oath.

SEC. 1872. There shall be in each organized county an assessor, who shall hold his office for the term of two years and until his successor is elected and qualified according to law, or appointed and qualified according to law, as the case may be, who shall take oath to support the constitution of the United States and the act organizing the Territory of Wyoming, and to faithfully perform the duties of assessor as prescribed by law. [C. L. 1876, ch. 28, p. 214, § 1.]

Bond and action thereon.

SEC. 1873. Each county assessor in this territory, before proceeding to the performance of his duties as such, shall give bond with one or more sureties who shall be residents of his county, to the people of Wyoming Territory in the penal sum of five thousand dollars, conditioned that he will faithfully perform all duties required of him by law as such assessor; such surety or sureties shall justify, and said bond shall be approved as other bonds of county officers. In case of any breach of the conditions thereof an action may be brought thereon in the name of the people of Wyoming Territory to the use of any party, person or county to recover any damages which may have been sustained in consequence of any breach of the conditions of such bond. [S. L. 1882, ch. 45, § 14.]

Deputy assessor—Appointment, etc.

SEC. 1874. The county assessor of any county may appoint as many deputies as he shall deem necessary to assist him in making the annual assessment, but before any deputy assessor shall be authorized to act as such, his appointment must be approved by the board of county commissioners and he shall take the oath required by law of the assessor, after which he shall have full power and authority to perform any and all duties required by law of the assessor; but such duties shall be performed in the name of the assessor, and the assessor shall be responsible for the acts of each deputy as assessor. [S. L. 1884, ch. 9, § 1.]

Assessor to pay deputies.

SEC. 1875. No deputy assessor shall receive any compensation from the county as such, nor shall the county in any case be liable for the pay of a deputy assessor, but the assessor shall pay his deputy or deputies out of the compensation now allowed him by law. [S. L. 1884, ch. 9, § 2.]

CHAPTER 6.

CORONER.

SECTION.
1876. Term of office—Oath and bond.
1877. When keeper of jail.
1878. When to execute process.
1879. Coroner's inquests—Jury.
1880. Completing jury from bystanders—Oath.
1881. Attendance of witnesses may be enforced.
1882. Oath of witness.
SECTION.
1883. Inquisition of jury.
1884. Arrest of person charged with crime.
1885. Coronor's return to court.
1886. Disposition of body and effects of deceased.
1887. Justice to act in absence of coroner.
1888. Post mortem examination.

Term of office—Oath and bond.

SEC. 1876. There shall be in each organized county, a coroner, who shall hold his office for two years, and until his successor is elected and qualified according to law, and who shall take an oath to support the constitution of the United States, and the act organizing the Territory of Wyoming, and to faithfully perform the duties of the office of coroner, as prescribed by law, and shall also give bond to the people of said territory, in the penal sum of one thousand dollars, with sufficient sureties, to be approved by the board of county commissioners, conditioned that he will faithfully perform all duties required by law as such coroner. [C. L. 1876, ch. 28, p. 214 § 1.]

When keeper of jail.

SEC. 1877. When the sheriff, from any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof, during the time the sheriff shall remain prisoner therein. [C. L. 1876, ch. 28, p. 214, § 2.]

When to execute process.

SEC. 1878. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case. In such case, he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in performance of similar duties. [C. L. 1876, ch. 28, p. 214, § 3.]

Coroner's inquests—Jury.

SEC. 1879. The coroner shall hold an inquest upon the dead bodies of such persons only, as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, or the cause of whose death is unknown, found, or being in the country, it shall be his duty to summon forthwith six citizens of the county, to appear before him at a time and place named. [C. L. 1876, ch. 28, p. 214 § 4.]

Completing juries from bystanders—Oath.

SEC. 1880. If any juror fails to appear, the coroner shall summon the proper number from the bystanders immediately, and proceed to impanel them, and administer the following oath in substance: "You do solemnly swear (or affirm) that you will diligently inquire and true presentment make, when, how, and by what means, the person whose body lies here dead, came to his death, according to your knowledge and the evidence given you, so help you God." [C. L. 1876, ch. 28, p. 214, § 5.]

Attendance of witnesses may be enforced.

SEC. 1881. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time as he may direct therein, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner shall have the same authority to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process, as justices of the peace have in cases before them. [C. L. 1876, ch. 28, p. 215, § 6.]

For witnesses fees, see § 1199.

Oath of witness.

SEC. 1882. An oath shall be administered to each witness as follows: "You do solemnly swear (or affirm) that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God." The testimony of the witness sworn, shall be reduced to writing under the coroner's order, and subscribed by each witness. [C. L. 1876, ch. 28, p. 215, § 7.]

Inquisition of jury.

SEC. 1883. The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, stating therein, as near as possible, the name of the person, and when, how, and by what means, if known, he came to his death. [C. L. 1876, ch. 28, p. 215, § 8.]

Arrest of persons charged with crime.

SEC. 1884. If the inquisition find a crime has been committed on the deceased, and name the person who the jury believes has committed it, thereupon, if the person charged be present, the coroner may order his arrest by an officer or any person, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. But if the person charged be not present, and the coroner believes he can be taken, and may escape unless immediately taken, he may issue a warrant to the sheriff or any constable of the county requiring him to arrest the person and take him before a justice of the peace; and the warrant of a coroner in such cases, shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, like proceedings shall be had as in similar cases commenced before a justice of the peace, sitting as court of inquiry. [C. L. 1876, ch. 28, p. 215, § 9.]

Coroner's return to court.

Sec. 1885. The coroner shall then return to the district court, the inquisition, the written evidence, and a list of witnesses who testify material matter. [C. L. 1876, ch. 28, p. 215, § 10.]

Disposition of body and effects of deceased.

Sec. 1886. The coroner shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if there be any, if not, he shall cause him to be decently buried, the expenses of the same to be paid from any property found with the body, or if there be none, then from the county treasury, by certifying an account of the expenses to the board of county commissioners, which shall be acted upon by said board as in cases of other accounts presented to them. The coroner shall also, within forty-eight hours after completing the inquest, turn over to the probate judge of the county, all papers, property and effects of every kind, found upon, or belonging to the body of the deceased person. [C. L. 1876, ch. 28, p. 215, § 11.]

Justice to act in absence of coroner.

Sec. 1887. When there is no coroner, or in case of his absence, or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner, in relation to dead bodies. [C. L. 1876, ch. 28, p. 216, § 12.]

Post mortem examination.

Sec. 1888. When an inquisition is being held, if the coroner or the jury shall deem it requisite, he may summon one or more physicians or surgeons, to make a scientific examination. [C. L. 1876, ch. 28, p. 216, § 13. S. L. 1882, ch. 78, §§ 1 and 2.]

For physician's fees, see §§ 1200 and 1201.

CHAPTER 7.

SURVEYOR.

SECTION.
1889. Term of office—Oath and bond—Deputy.
1890. To make county surveys and plats.
SECTION.
1891. To make private surveys—Certificate as evidence.
1892. Records, field notes and plats.

Term of office—Oath and bond—Deputy.

Sec. 1889. There shall be in each organized county, a county surveyor, who shall hold his office for two years, and until his successor is elected or appointed and qualified according to law. He shall take the oath prescribed in this chapter, to be taken by other county officers, said oath to be indorsed on his certificate of election or appointment, and shall give bond with sureties, to the people of this territory in the penal sum of one thousand dollars, for the faithful performance of his duties, which oath and bond shall be filed in the county clerk's office. The county surveyor may appoint a deputy, for whose official acts he shall be responsible, and who shall take the oath prescribed by law for county surveyors. Said deputy shall give a bond to the surveyor for the faithful performance of all duties required of him. [C. L. 1876, ch. 28, p. 216, § 1. S. L. 1886, ch. 58, § 1.]

To make county surveys and plats.

Sec. 1890. It shall be the duty of the county surveyor to make or conduct all surveys in and for the county for which he is surveyor, and he shall keep a plat of all official surveys made by him on file in his office, said plat to be in strict conformity to the field notes of the survey thereof recorded in his office. [S. L. 1886, ch. 58, § 2.]

To make private surveys—Certificate as evidence.

SEC. 1891. It shall be the duty of the county surveyor to execute any survey which may be required by order of any court, or upon application of any individual or corporation, and the certificate of the county surveyor shall be admitted as legal evidence in any court of the territory, but the same may be explained or rebutted by other evidence. [C. L. 1876, ch. 28, p. 216, § 2.]

Records, field notes and plats.

SEC. 1892. The county surveyor shall keep a correct and fair record of all surveys made by him in a book to be provided for that purpose by the county, which he shall transmit to his successor in office. He shall also number such surveys progressively, and shall also preserve a copy of field notes and calculations of each survey, indorsing thereon its proper number; a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same. [C. L. 1876, ch. 28, p. 216, § 3.]

For duties of surveyor in surveying irrigating ditches, see §§ 1362 and 1365.

CHAPTER 8.

COUNTY AND PROSECUTING ATTORNEY.

SECTION.
1893. Oath and bond.
1894. General duties—Employment of other attorneys by county.
1895. To be legal advisor of county officers.
1896. Restrictions upon employment.
1897. To examine official bonds.

Oath and bond.

SEC. 1893. There shall be in each organized county, a county and prosecuting attorney, who shall, before entering upon the duties of his office, take the oath required of other county officers in this title, which oath shall be indorsed on the back of his certificate of election or appointment, and shall also give bond to the people of this territory in the penal sum of two thousand dollars, with sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of his office as required by law, and said certificate and bond shall be filed with the county clerk, and a copy of said certificate of election shall be filed by such attorney with the county clerk of the district court sitting for his county. [C. L. 1876, ch. 28, p. 216, § 1.]

General duties—Employment of other attorneys by county.

SEC. 1894. Every county and prosecuting attorney shall appear in the district court in behalf of the territory and the county in which he may be elected or appointed, in all indictments, suits and proceedings which may be pending or arise in said county, wherein the territory, or the people thereof, or said county may be a party, he shall also appear at the hearing of every writ of *habeas corpus*, sued out in his county by any person charged with, or convicted of, any public offenses, before the judge of his district, he shall prosecute or defend against all appeals and writs of error which may be removed from the district court of his county to the supreme court of this territory, in all cases where said county or territory is a party in all such indictments, actions, suits or proceedings which may be brought to the district court, when sitting in and for said county, by change of venue from any other district court of this territory, and he shall appear in the preliminary examination of persons charged with any offense before any justice of the peace or judge within his county. Nothing contained in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute, or defend, or assist said attorney in so doing, in behalf of the people of the territory or such county, in any such indictment, action or proceeding; but in such case the nature and necessity of such employment shall appear in the record of the board. [C. L. 1876, ch. 28, p. 217, § 2. S. L. 1879, ch. 8, § 2.]

To be legal advisor of county officers.

SEC. 1895. The county and prosecuting attorney, upon request of any county officer of his county, shall, without fee, give his opinion in writing upon all questions of law having reference to the duties of such officer, which may be submitted, and shall file and preserve in his office a copy of all such opinions. [C. L. 1876, ch. 28, p. 217, § 3.]

Restrictions upon employment.

SEC. 1896. Each county and prosecuting attorney shall receive such fees or salary, or both, as may be allowed him by law, and the county and prosecuting attorney shall not receive any fee from, or prosecute or defend for any individual or corporation in any civil or criminal suit, or proceeding at law, in which this territory or his county may be a party, but in all such cases he shall prosecute or defend for said territory or county, and if such attorney shall fail, neglect or refuse to perform any and all official duties enjoined upon him by law, he and his sureties shall be liable, in each case, on his official bond in a sum not less than one hundred dollars and not more than five hundred dollars, in the discretion of the court having jurisdiction of such cases. [C. L. 1876, ch. 28, p. 217, § 4. S. L. 1882, ch. 45, § 18.]

To examine official bonds.

SEC. 1897. It shall be the duty of the county and prosecuting attorney of each county to examine the bonds offered by every county officer, as such county officer before such bond or bonds are approved by the board of the commissioners and to report to such board, or to the judge of probate in writing whether or not such bond or bonds are executed as required by law. No county or prosecuting attorney shall be concerned or engaged as attorney, counsel or agent for either party other than the county or the territory in any action civil or criminal in which the county of which he is the county and prosecuting attorney, is a party or is interested. [S. L. 1882, ch. 45, § 18.]

CHAPTER 2.

SUPERINTENDENT OF SCHOOLS.

SECTION. 1898. Oath and bond—Prohibited from teaching.

Oath and bond—Prohibited from teaching.

SEC. 1898. There shall be in each organized county a superintendent of public schools, who shall, before entering upon the duties of his office, take the oath prescribed for other county officers, which oath shall be indorsed on the back of his certificate of election or appointment; he shall also give bond to the people of the territory in the penal sum of five hundred dollars for the faithful performance of all duties required of him by law as such superintendent, to be approved by the board of county commissioners, and together with said certificate and oath, filed in the county clerk's office; *Provided*, That no person shall at the same time hold the positions of county superintendent of public schools and teacher in any public school in his or her county. [C. L. 1876, ch. 28, p. 217, § 1. S. L. 1886, ch. 23, § 1; ch. 72, § 1.]

CHAPTER 10.

JUSTICES OF THE PEACE AND CONSTABLES.

SECTION.	SECTION.
1899. Election—Oath and bond.	1900. Residence and office to be in precinct.

Election—Oath and bond.

SEC. 1899. There shall be elected, or appointed, in each county, one or more justices of the peace and constables, in such precincts as the board of county commissioners may establish; and it shall be the duty of the county commissioners to segregate the counties into justice and constable precincts, and the justice and constable shall not be voted for outside the precincts in which they live. They shall, before entering upon the duties of their offices, take the oath required of other county officers, which oath shall be indorsed on the back of their certificates of election or appointment, and shall also give bonds in the sum of five hundred dollars each, payable to the people of the territory, with sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful discharge of the duties of their respective offices, and that they will pay over all moneys which may come to their hands by virtue thereof. [C. L. 1876, ch. 28, p. 218, § 1.]

Residence and office to be in precinct.

Sec. 1900. Each justice of the peace and each constable shall reside and have his office in the precinct where he resides at the time of his election or appointment. [C. L. 1876, ch. 28, p. 218, § 2.]

Justice of the peace in Fort Laramie precinct may reside and have his office on military reservation, see §1205.

CHAPTER 11.

MISCELLANEOUS PROVISIONS.

SECTION.
1901. Offices to be at county seat—Records public.
1902. Bonds and oath.
1903. Time of qualifying.
1904. Copies of records as evidence.
1905. Extortion by officers—Penalty.
1906. Powers and compensation in special cases.
1907. Official bonds payable to territory.
1908. Officers to be electors.
1909. When justices and constables to pay over money—Penalty.
1910. Bonds of revenue officers.
1911. Commissioners may require new bonds.
1912. Qualifications of sureties.
SECTION.
1913. Failing to give new bond renders office vacant.
1914. Officer filling vacancy to give bonds.
1615. Perjury by surety.
1916. Public money to be paid into treasury.
1917. Officers to be paid in warrants.
1918. Official year defined.
1919. Fire wardens—Appointment, etc.
1920. Duties and powers of fire wardens.
1921. Failure to repair chimney, etc.—Penalty.
1922. Failure to remove inflammable material, etc.—Penalty.
1923. Fees and further duties of fire wardens.
1924. Abatement of nuisance.

Officers to be at county seat--Records public.

Sec. 1901. Every sheriff, county clerk, and judge of probate shall keep his office at the county seat of his county, and in the office provided by the county; if there be none provided, then at such place as the board of county commissioners may direct, and they shall keep the same open during the usual business hours of each day, Sundays and legal holidays excepted; and all books and papers required to be in their offices, shall be open to the examination of any person; and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit, for each day he so neglects, the sum of five dollars. [C. L. 1876, ch. 28, p. 218, § 1; S. L. 1886, ch. 67, § 1.]

Bonds and oaths.

Sec. 1902. Every county officer provided for by law, shall, before entering upon the duties of his office, and within twenty days after the commencement of the term for which he was elected or appointed, execute and deposit his official bond, as prescribed by law, and every such officer shall, also, within the same time, take and subscribe the oath of office proscribed by law, before some officer authorized to administer oaths, and deposit the same, with his official bond as prescribed by law. [C. L. 1876, ch. 28, p. 218, § 2.]

Time of qualifying.

Sec. 1903. All county officers elected at any general election, shall qualify and enter upon the discharge of their respective duties upon the first Monday in January immediately following such general election. [S. L. 1879, ch. 34, § 2.]

Copies of records as evidence.

Sec. 1904. Copies of all documents, writs, proceedings, instruments, papers and writings, duly filed or deposited in the office of any judge of probate, county clerk or county treasurer, and transcripts from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases. [C. L. 1876, ch. 28, p. 218, § 3.]

Extortion by officers—Penalty.

SEC. 1905. No county officer shall directly or indirectly ask, demand or receive for any service required by him to be performed in the discharge of any of his official duties any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and being fined in a sum not less than twenty-five dollars, and not more than two hundred dollars. [C. L. 1876, ch. 28, p. 219, § 4.]

Powers and Compensation in special cases.

SEC. 1906. Whenever any county officer shall be required to perform the official duties of any other officer in this territory, he shall for the time being have the same powers in respect to the duties of such office as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services. [C. L. 1876, ch. 28, p. 219, § 5.]

Official bonds payable to territory.

SEC. 1907. Every official bond of any county officer, where not otherwise provided by law, shall be payable to the people of the Territory of Wyoming, and an action shall lie thereon to the use of any party aggrieved, in the name of the people. [C. L. 1876, ch. 28, p. 219, § 6.]

Officers to be electors.

SEC. 1908. No person shall be eligible for any county office unless he be an elector, and no person shall be received as surety on the official bond of any county officer unless he be an actual resident of this territory. [C. L. 1876, ch. 28, p. 219, § 7.]

For qualifications of sureties see also § 1912.

When justices and constables to pay over money—Penalty.

SEC. 1909. Each justice of the peace and each constable shall pay all moneys that may come into his hands by virtue of his office to any party or parties entitled to the same upon demand of such party or parties, whether collected on attachment, execution or otherwise; and all moneys collected by any constable officially shall be by him paid to the justice issuing the process whereby he collected the same, on the return day thereof, or as soon as collected, if prior to the return thereof; and if any justice of the peace or constable shall fail, neglect or refuse to pay over any moneys as required in this section, or shall fail, neglect or refuse to deliver all books, papers, records or other property appertaining to his office to his successor in office, he shall be subject to a fine of not less than twenty-five dollars and not more than one hundred dollars for each offense, and shall also be liable on his official bond to the person aggrieved. [C. L. 1876, ch. 28, p. 219, § 8.]

Bonds of revenue officers.

SEC. 1910. The several boards of county commissioners of this territory, at any regular or special meeting, shall have power, by an order entered of record, to require any county officer, whose duty it is to receive any of the revenues of the county, to give bonds with sufficient sureties to the people of the Territory of Wyoming, conditioned as now required by law, in the penal sum of one and one-fourth times the amount of taxes collected, or revenues of any kind, coming into his hands as such officer. [C. L. 1876, ch. 11, § 1.]

Commissioners may require new bonds.

SEC. 1911. If at any time the sureties, or any of them, upon any official bond shall die, remove from this territory, become insolvent, or from any other cause cease to possess the qualifications required by this chapter, the board of county commissioners shall require the officer giving such bond, to give a new bond, with such sureties as are required by this chapter. [C. L. 1876, ch. 11, § 2.]

Qualifications of sureties.

SEC. 1912. Sureties upon an official bond, hereafter given in this territory, must be residents of this territory, and worth, in the aggregate, double the amount to be secured by the bond, over and above all exemptions, debts and liabilities, and each surety shall make an affidavit as to what he is worth, over and above all of his debts, liabilities and exemptions, which affidavit shall be endorsed on the bond. [C. L. 1876, ch. 11, § 3.]

Failure to give new bond renders office vacant.

SEC. 1913. Whenever the board of county commissioners of any county shall require any new or additional bond to be given, as required by this chapter, it shall be the duty of the county clerk to immediately give personal notice thereof to the person required to give such bond, and if the bond so required be not given within twenty days after the receipt of such notice, it shall be the duty of the board of county commissioners to declare the office for which such bond is required to be given, vacant, and to cause such vacancy to be filled as provided by law. The person elected or appointed to fill such vacancy upon qualifying as required by law, shall hold his office until the next general election in the county, and until his successor is duly chosen and qualified. [C. L. 1876, ch. 11, § 4.]

For manner of filling vacancy, see §§ 1084 and 1175.

Officer filling vacancy to give bonds.

SEC. 1914. Every person appointed to fill any vacant office, as required by law, shall, before entering upon the duties of his office, qualify and give bond in the same manner as though he had been duly elected to the same office, and shall in all things be subject to the provisions of this title. [C. L. 1876, ch. 11, § 5.]

Perjury by surety.

SEC. 1915. Any surety upon any official bond, who shall wilfully, falsely, and corruptly make affidavit as to any of the qualifications required of him as such, shall be guilty of perjury, and upon conviction therefor, shall be imprisoned in the penitentiary for a term not exceeding ten years, and not less than one year. [C. L. 1876, ch. 11, § 6. S. L. 1882, ch. 52, § 1.]

Public money to be paid into treasury.

SEC. 1916. All county officers receiving money for any county in this territory, shall pay the same into the county treasury of the proper county. [S. L. 1877, p. 31, § 1.]

Officers to be paid in warrants.

SEC. 1917. All county officers of any county in this territory are prohibited from paying themselves from money belonging to any county which may be in their hands, but shall receive pay for all services rendered to a county, in warrants, drawn upon the county treasury by the board of county commissioners. [S. L. 1877, p. 31, § 2.]

Official year defined.

SEC. 1918. The official year of all county and precinct officers shall commence on the first Monday of January every second year, except as otherwise provided by law. [C. L. 1876, ch. 89, § 2.]

Fire wardens—Appointment, etc.

SEC. 1919. It shall be the duty of the sheriff of any county in the territory, to appoint one or more policemen for any city, town or village which is unincorporated, when requested to do so by the county commissioners of the county in which such town or city be located. The policemen so appointed shall be, *ex-officio*, fire wardens of the unincorporated cities, towns, or villages for which they are acting as policemen. [C. L. 1876, ch. 54, § 1.]

Duties and powers of fire wardens.

SEC. 1920. It shall be the duty of the said fire wardens to go, in the day time, and examine all houses, buildings or superstructures within the city, town or village where they are acting as said fire wardens and policemen, and ascertain from personal examination the condition of all chimneys, stove-pipes, stove flues, ranges, grates, furnaces, or other articles, or anything used in said houses, buildings, or superstructures in which to hold fire, or to conduct the smoke from any fire, and when any such articles, or the fixtures thereto, are found to be defective in make or material, or so situated as to endanger any of the property of any of the inhabitants thereof, to loss from fire by, or on account of, any of said defects, then the said fire wardens shall in writing notify the owner or occupant of said house, building or superstructure where such defective chimney, flue, or stove-pipe, or other article, is situated, to repair the same so as to prevent danger from fire to the property in said city, town, or village; and said fire wardens shall, also, direct the manner in which said repairs shall be made. Said fire wardens shall, also, under the direction of the chief engineer of the fire department, when there is one, and when there is no chief engineer of a fire department in a city, town or village, then, under the direction of the sheriff, shall examine streets, alleys, out-lots, and the surrounding of houses and buildings in such town, city or village where he is acting as such fire warden, and direct the removal, by the owner of the premises, of any inflammable matter or material found thereon, and generally to perform such duties as directed by the sheriff of the county, or the chief of the fire department in the city, town or village, to fully protect the property of such city, town, or village, from loss by conflagration. [C. L. 1876, ch. 54, § 2.]

Failure to repair chimney, etc.—Penalty.

SEC. 1921. Any person who shall, after being notified by the fire warden to repair any defective chimney, flue, furnace, range, oven, stove-pipe, or fixture therewith connected, so as to prevent the same from endangering the property of said city, town or village, from destruction or loss by fire, who shall neglect or refuse, for a longer time than twenty-four hours after notice in writing to repair the same, to comply with the order and direction of said fire warden, and shall fail or refuse to make the required repairs, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars, and not to exceed one hundred dollars, together with the costs of prosecution in the case. [C. L. 1876, ch. 54, § 3.]

Failure to remove inflammable material, etc.—Penalty.

SEC. 1922. When said fire warden shall order the removal of any dangerous or inflammable material from the premises of any person, a failure to comply or remove the same upon the part of the owner, occupant, or agent of the premises where the said dangerous or inflammable material is situated, for the period of forty-eight hours after notice in writing from said fire warden, to remove the same from the limits of the city, town, or village, so as to prevent danger therefrom, shall be guilty of a misdemeanor, and, upon conviction thereof, the person so failing shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, together with the costs of prosecution, and shall also be directed to remove said dangerous or inflammable article or articles, or that the same shall be removed by the said fire warden at the expense of said defendant, in case the defendant neglects to remove the same for one day after being notified by the justice of the peace, or other officer, so to do. [C. L. 1876, ch. 54, § 4.]

Fees and further duties of fire wardens.

SEC. 1923. The fire warden shall be allowed a fee of five dollars in each conviction, in addition to other costs, to be collected from the defendant; in addition to the other duties herein required of fire wardens, they, or either of them, shall, upon view or information, give the board of county commissioners of their county notice of any nuisance existing under the laws of this territory in the respective cities, towns or villages, as well as any other matter injurious to the health or dangerous to the life or limbs of any person or persons in such city, town or village, including all cellars and other excavations, as may be dangerous to persons as aforesaid. [C. L. 1876, ch. 54, § 5.]

Abatement of nuisances.

SEC. 1924. Said board of county commissioners, upon receiving notice as aforesaid, or upon personal knowledge, shall have power to, and are hereby authorized to, abate any such nuisances at the expense of the person or persons, either by causing the same to be removed, or by filling up, or boarding around such excavations, as the case may be; *Provided*, That said commissioners shall first notify the person, or persons aforesaid, to abate such nuisances. [C. L. 1876, ch. 54, § 6.]

TITLE 34. PHYSICIANS, SURGEONS AND PHARMACISTS.

CHAPTER 1. PHYSICIANS AND SURGEONS.
CHAPTER 2. PHARMACISTS.

CHAPTER 1.

PHYSICIANS AND SURGEONS.

SECTION.
1925. Qualifications of practitioners.
1926. Copy of diploma to be filed.
1927. Person filing diploma to be identified.
1928. Penalty for practicing without authority.
1929. Arrest of offenders.
1930. Practicing in cases of emergency, etc., not unlawful.
1931. Evidence upon trial of offenders.

Qualifications of practitioners.

SEC. 1925. No person shall practice medicine, surgery, or obstetrics in this territory, who has not received a medical education and a diploma from some regularly chartered medical school, said school to have a *bona fide* existence at the time when said diploma was granted. [C. L. 1876, ch. 83, § 1.]

Copy of diploma to be filed.

SEC. 1926. Every physician, surgeon or obstetrician in this territory, shall file for record with the register of deeds of the county in which he or she is about to practice his or her profession, or where he or she now practices it, a copy of his or her diploma, at the same time exhibiting the original, or a certificate from the dean of the medical school of which he or she is a graduate, certifying to his or her graduation. [C. L. 1876, ch. 83, § 2. S. L. 1877, p. 83, § 1.]

Person filing diploma to be identified.

SEC. 1927. Every physician, surgeon, or obstetrician, when filing a copy of his or her diploma, or certificate of graduation, as required by the preceding section, shall be identified as the person named in the papers about to be filed, by the affidavit of two citizens of the county, or by his or her affidavit, taken before a notary public or commissioner of deeds for this territory, which affidavit shall be filed in the office of the register of deeds. [C. L. 1876, ch. 83, § 3.]

Penalty for practicing without authority.

SEC. 1928. Any person practicing medicine, surgery or obstetrics in this territory, without complying with the preceding sections of this chapter, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days, nor more than six months, or by both such fine and imprisonment for each and every offense. And any person filing or attempting to file as his or her own, the diploma or certificate of graduation of another, or a forged affidavit of identification, shall be guilty of a felony, and upon conviction, shall be subject to such fine and imprisonment in the penitentiary as may be fixed by the court for said offense. [C. L. 1876, ch. 83, § 4.]

Arrest of offenders.

SEC. 1929. It shall be the duty of the police, sheriff or constable, to arrest all persons practicing medicine, surgery or obstetrics, in this territory, who have not complied with the provisions of this chapter, and the officer making the arrest shall be entitled to one-half of the fine collected. [C. L. 1876, ch. 83, § 5.]

Practicing in cases of emergency, etc., not unlawful.

Sec. 1930. No portion of this chapter shall apply to any person who, in an emergency, may prescribe or give advice in medicine, surgery or obstetrics, in a section of country where no physician, surgeon or obstetrician resides, or where no physician, surgeon or obstetrician resides within convenient distance, nor to persons prescribing in their own family; nor shall the provisions of this chapter apply to persons claiming to practice medicine, surgery or obstetrics in any section of the territory wherein no physician or surgeon, having a diploma or certificate of graduation as aforesaid, now resides or shall hereafter reside. [C. L. 1876, ch. 83, § 6.]

Evidence upon trial of offenders.

Sec. 1931. Upon the trial of any person charged with a violation of any of the provisions of this chapter, it shall be sufficient for the prosecution to show that the defendant has practiced medicine, surgery or obstetrics within the county where the indictment is found, at any time since the passage of this chapter, and the defendant shall not, after such proof, be entitled to an acquittal until he or she shows by the testimony of some competent witness, upon oath, that the defendant has received a medical education and a genuine diploma from some regularly chartered medical school, provided that the defendant may show such facts by depositions taken in the same manner as depositions are taken in civil cases. [C. L. 1876, ch. 83, § 7.]

CHAPTER 2.

PHARMACISTS.

SECTION.
1932. Pharmacists must be registered.
1933. Who may compound prescriptions.
1934. Commissioners of pharmacy, appointment, etc.
1935. Registration of pharmacists.
1936. Examination of pharmacists by commission.
SECTION.
1937. Fees for examination—Re-examination.
1938. Responsibility of pharmacists.
1939. Sale and labeling of poisons.
1940. Penalty for practicing without registration.
1941. Application of this chapter.

Pharmacists must be registered.

Sec. 1932. It shall be unlawful for any person not a registered pharmacist within the meaning of this chapter, to conduct any pharmacy, drug store, apothecary shop or store for the purpose of retailing, compounding or dispensing medicines or poisons, except as hereinafter provided. [S. L. 1886, ch, 65, § 1.]

Who may compound prescriptions.

Sec. 1933. It shall be unlawful for the proprietor of any store or pharmacy to allow any person except a registered pharmacist to compound or dispense the prescriptions of physicians or to retail or dispense poisons, except as an aid to and under the supervision of a registered pharmacist. [S. L. 1886, ch. 65, § 2.]

Commissioners of pharmacy, appointment, etc.

Sec. 1934. The governor, with the advice and consent of the territorial council, shall appoint three persons from among the registered pharmacists of the territory, representing the different portions of the territory as nearly as practicable, all of whom shall have been residents of the territory for two years and of at least five years' practical experience in their profession, who shall be known and styled as commissioners of pharmacy for the Territory of Wyoming; each commissioner so appointed shall hold his office for two years and until a successor be appointed and qualified. If a vacancy occur in said commission another shall be appointed as aforesaid to fill the unexpired term thereof. Said commissioners shall have power to make by-laws and all necessary regulations, and prescribe a course of study for apprentices or students who may be desirous of entering upon the study of the profession of pharmacy, for the proper fulfillment of their duties under this chapter without expense to the territory. [S. L. 1886, ch. 65, § 3.]

Registration of pharmacists.

SEC. 1935. The commissioners of pharmacy shall register in a suitable book, a duplicate of which is to be kept in the office of the secretary of the territory, the names and places of residence of all persons to whom they issue certificates and the dates thereof. It shall be the duty of said commissioners of pharmacy to register, without examination as registered pharmacists, all pharmacists and druggists who are engaged in business in the Territory of Wyoming at the passage of this chapter, if they have had three years experience as owners or principals of stores as pharmacists for selling at retail, compounding or dispensing drugs, medicines or chemicals for medicinal use, or for compounding and dispensing physicians' prescriptions, and all assistant pharmacists eighteen years of age engaged in said stores or pharmacies in the Territory of Wyoming at the passage of this chapter and who may have been engaged as such in some store or pharmacy where physicians' prescriptions were compounded and dispensed for not less than three years prior to the passage this chapter; *Provided*, *however*, They shall pass a satisfactory examination as provided for candidates by the commissioners of pharmacy of the territory, and that in case of failure or neglect on the part of any such person or persons to apply for registration within sixty days after they shall have been notified they shall undergo an examination such as is provided for in the next succeeding section. [S. L. 1886, ch. 65, § 4.]

Examination of pharmacists by commission.

SEC. 1936. The said commissioners of pharmacy shall, upon application, and at such time and place, and in such manner as they may determine, examine either by written examination or orally; each and every person who shall desire to conduct the business of selling at retail, compounding or dispensing drugs, medicines or chemicals for medicinal use, or compounding and dispensing physicians' prescriptions as pharmacists, and if a majority of said commissioners shall be satisfied that said person is competent and fully qualified to conduct said business of compounding or dispensing drugs, medicines or chemicals for medicinal use, or to compound and dispense physicians' prescriptions, they shall enter the name of such person as a registered pharmacist in the book provided for in the last preceding section, and every graduate in pharmacy, having a diploma from an incorporated college or school of pharmacy that requires a practical experience in pharmacy of not less than four years before granting a diploma, shall be entitled to have his or her name entered as a registered pharmacist by said commissioners without examination. [S. L. 1886, ch. 65, § 5.]

Fees for examination—Re-examination.

SEC. 1937. The commissioners of pharmacy shall be entitled to demand and receive from each person whom they register and furnish a certificate as a registered pharmacist, without examination, the sum of three dollars; and from each and every person whom they examine the sum of ten dollars, which shall be in full, for all services. And in case the examination shall prove defective and unsatisfactory, and his name not be registered, he shall be permitted to present himself for re-examination within any period not exceeding twelve months next thereafter, and no charge shall be made for such re-examination. [S. L. 1886, ch. 65, § 6.]

Responsibility of pharmacists.

SEC. 1938. Every registered pharmacist shall be held responsible for the quality of all drugs, chemicals and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturer and those known as "patent medicines," and should he knowingly, intentionally and fraudulently adulterate, or cause to be adultered, such drugs, chemicals or medical preparations, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, be liable to a penalty not exceeding one hundred dollars, and in addition thereto, his name be stricken from the register. [S. L. 1886, ch. 65, § 7.]

Sale and labelling of poisons.

SEC. 1939. It shall be unlawful for any person to sell, barter or give away any poisons without distinctly labelling the bottle, box or package, in which it is contained with the name of the article, the word poison and a vignette representing a skull and crossbones, and the name and place of business of the seller. The purchaser must be made aware of the poisonous nature of the article, and shall represent that it is to be used for a legitimate purpose. The seller shall also enter in a book kept for that purpose the date of sale, name of purchaser, name and quality of the poison, and for what purpose it was purchased. This provision shall not apply to the dispensing of poisons in usual doses, nor to physicians' precriptions. [S. L. 1886, ch. 65, § 8.]

Penalty for practicing without registration.

SEC. 1940. Any person not a registered pharmacist, as provided for in this chapter, who shall conduct a store, pharmacy or place for retailing, compounding or dispensing drugs, medicines or chemicals, for medicinal use, or for compounding and dispensing physicians' prescriptions, or shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be liable to a penalty of not less than twenty-five dollars nor more than one hundred dollars. [S. L. 1886, ch. 65, § 9.]

Application of this chapter.

SEC. 1941. This chapter shall not apply to physicians putting up their own prescriptions, nor to the sale of proprietory medicines. [S. L. 1886, ch. 65, § 10.]

TITLE 35. POLICE REGULATIONS.

CHAPTER 1. RESTRICTIONS UPON THE SALE OF RAILROAD TICKETS.
CHAPTER 2. RAILROADS TO PLOW FIRE GUARDS.
CHAPTER 3. STORAGE OF EXPLOSIVES.

CHAPTER 1.

RESTRICTIONS UPON THE SALE OF RAILROAD TICKETS.

SECTION.
1942. Agent to have certificate of authority.
1943. Unlawful to sell without certificate.
1944. Penalty.
1945. Certificate to be posted—Form.
1946. Redemption of unused tickets.

Agent to have certificate of authority.

SEC. 1942. It shall be the duty of the owner or owners of any railroad or other conveyance for the transportation of passengers to provide each agent who may be authorized to sell tickets or other certificates, entitling the holder to travel upon any railroad or other public conveyance, with a certificate, setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal, if such there be, of the owner of such railroad or other public conveyance and also by the signature of the owner or officer whose name is signed upon the tickets or coupons which such agent may sell. [S. L. 1877, p. 130, § 1.]

Unlawful to sell without certificate.

SEC. 1943. It shall not be lawful for any person not possessed of such authority, so evidenced, to sell, barter or transfer, for any consideration whatever, the whole or any part of any ticket or tickets, passes or other evidences of the holder's title to travel on any railroad or other public conveyance, whether the same may be situated, operated or owned within or without the limits of this territory, except as authorized by this chapter. [S. L. 1877, p. 130, § 2.]

Penalty.

SEC. 1944. Any person or persons violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall be liable to be punished by a fine of not exceeding five hundred dollars and by imprisonment not exceeding one year, or either, or both, in the discretion of the court in which such person or persons shall be convicted. [S. L. 1877, p. 131, § 3.]

Certificate to be posted—Form.

SEC. 1945. It shall be the duty of every agent who shall be authorized to sell tickets or parts of tickets, or other evidences of the holder's title to travel, to exhibit to any person desiring to purchase a ticket or to any officer of the law, who may request him, the certificate of his authority thus to sell, and to keep said certificate posted in a conspicuous place in his office, for the information of travelers.

AGENT'S CERTIFICATE.

To whom it may concern: Notice is hereby given that ——— ——— is an agent in the employ of the ——— company, at ———, authorized to sell tickets entitling the holder thereof to travel upon. Witness the corporate seal of ——— company and the hand of——— ———

General Passenger and Ticket Agent.

[S. L. 1877, p. 131, § 4.]

Redemption of unused tickets.

SEC. 1946. It shall be the duty of the owner or owners of railroads, or other public conveyances, to provide for the redemption of the whole or any parts, or coupons of any ticket or tickets, as they may have sold, as the purchaser for any reason has not used and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used; and the sale by any person of the unused portion of any ticket, otherwise than by the presentation of the same for redemption, as provided for in this section, shall be deemed to be a violation of the provisions of this chapter, and shall be punished as is hereinbefore provided; *Provided*, That this chapter shall not apply to the sale of first-class tickets; *Provided*, That this chapter shall not prohibit any person who has purchased a regular first-class ticket from any agent authorized by this chapter with the *bona fide* intention of traveling upon the same the whole distance between the points named in the said ticket, from selling the unused part of the same to any other person, if such person travels upon the same, unless said tickets shall be special contract tickets and the local fare to the point to which said ticket may be used shall equal the price paid for such special contract ticket. [S. L. 1877, p. 131, § 5.]

CHAPTER 2.

RAILROADS TO PLOW FIRE GUARDS.

SECTION.	SECTION.
1947. Where fire guards to be plowed. 1948. Penalty for non-compliance.	1949. Liability for damages.

Where fire guards to be plowed.

SEC. 1947. Every railroad corporation operating its line of road, or any part thereof within this territory, shall, between the first day of July and the first day of September of each and every year, upon each side of its line of road, plow as a fire-guard a continuous strip of not less than six feet in width, which said strip of land shall run parallel with said line of railroad, and be plowed in such good and workmanlike manner as to effectually destroy the vegetation thereon, and be sufficient to prevent the spread of fires, and the outer line of said strip of plowed land shall be on the outer line of said corporation's right of way, or if upon land owned by said corporation, one hundred feet on either side from the center of the road; *Provided*, That such fire-guard need not be constructed within the limits of any town or city, nor along the line of a railroad running through the mountains, or over other lands where plowing would be impracticable or unnecessary; *And*, *provided further*, That it shall be the duty of the board of county commissioners of the respective counties within which any railroad corporation operates its line of road, or any part thereof, to ascertain what portions along the line of any such road it is impracticable or unnecessary to plow such fire-guards, notice of which shall be given in writing by the said respective boards of county commissioners to such railroad corporations on or before the first day of June of each and every year. [S. L. 1886, ch. 50, § 1.]

Penalty for non-compliance.

SEC. 1948. Any railroad corporation failing to comply with the provisions of the preceding section, shall be liable to pay a penalty of one hundred dollars for each and every mile, or fractional part thereof, of such strip of land as it neglects to plow upon either side of the line of its road in this territory, in each and every year as aforesaid, the same to be collected in any proper action in any court of competent jurisdiction, in the name of the Territory of Wyoming, and when collected it shall be paid into the school fund of the county wherein the cause of action accrued; *And provided*, That the said action shall be brought within one year next after it accrues. [S. L. 1886, ch. 50, § 2.]

Liability for damages.

SEC. 1949. Every railroad corporation operating its line of road, or any part thereof within this territory, shall be liable for all damages by fire that is set out, or caused by operating any such line of road, or any part thereof, where such railroad company has failed to plow a fire-guard as provided in this chapter, and any such damages may be recovered by the party damaged, by the proper action in any court of competent jurisdiction; *Provided*, The said action be brought by the party injured within one year next after said damages shall have been inflicted or caused. [S. L. 1886, ch. 50, § 3.]

CHAPTER 3.

STORAGE OF EXPLOSIVES.

SECTION.
1950. Where explosives shall be stored.
1951. Powder magazine, how constructed.
SECTION.
1952. Penalties—Nuisance.

Where explosives shall be stored.

SEC. 1950. It shall be unlawful for any person or company to store any gunpowder, or any other explosive material, at a less distance than one thousand feet from any house or habitation, when more than fifty pounds are stored at the same place, except with the sanction of the board of county commissioners of the county in which said storage place may be located; but it shall be unlawful to place or to keep more than five pounds of such powder, or other explosive material, in any house or building occupied as a residence, or in any outbuilding pertaining thereto. [S. L. 1886, ch. 27, § 1.]

Powder magazine, how constructed.

SEC. 1951. Hereafter any powder magazine that may be built, shall be so constructed as to provide and maintain the storage room thereof, entirely below the natural surface of the ground adjacent; and it shall be unlawful to store such powder or explosives in any other than such storage rooms. [S. L. 1886, ch. 27, § 2.]

Penalties—Nuisance.

SEC. 1952. Any one violating the provisions of section nineteen hundred and fifty shall be, on conviction, fined in any sum not exceeding one hundred dollars, for each and every offense, and may be imprisoned not exceeding thirty days, or both fine and imprisonment, in the discretion of the court having jurisdiction. Any violation of the provisions of the preceding section shall be a public nuisance, and shall be abated at the suit of any person, in any court of competent jurisdiction. [S. L. 1886, ch. 27, § 3.]

TITLE 36. POOR AND PAUPERS.

CHAPTER 1. MAINTENANCE OF BY COUNTIES.
CHAPTER 2. BURIAL OF INDIGENT VETERANS.

CHAPTER 1.

MAINTENANCE OF BY COUNTIES.

SECTION.
1953. Commissioners to have superintendence of
1954. Mode of providing for.
1955. Care of non-resident when sick.
1956. Residence of pauper as affecting relief.
1957. Each county to care for its paupers.
1958. Misdemeanor to bring pauper into county.
1959. Authorities not to send paupers into other counties.

SECTION.
1960. Disposition of effects of pauper decedent.
1961. Dispos'tion of surplus arising from sale.
1962. County workhouses and hospitals.
1963. Tax levy for poorhouse in Laramie County.
1964. Counties to pay for care of pauper insane.
1965. Maintenance of insane confined at Mt. Pleasant, Iowa.

Commissioners to have superintendence of.

SEC. 1953. The board of county commissioners of each county in this territory, are hereby vested with entire and exclusive superintendence of the poor in their respective counties. [C. L. 1876, ch. 93, § 1.]

Mode of providing for.

SEC. 1954. Any poor person, being a resident of this territory, may receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor in such cases, or appoint such agent, or agents, as they may deem necessary and qualified to oversee and provide for the same. [C. L. 1876, ch. 93, § 2.]

Care of non-resident when sick.

SEC. 1955. When any non-resident of this territory, or any other person not coming within the definition of a pauper, shall fall sick in any county in this territory, not having money or property to pay his board, nursing, or medical attendance, the county commissioners, upon notice thereof, shall provide such assistance as they may deem necessary, by contract or otherwise; and if such person shall die, said commissioners shall cause to be given to such person decent burial. And said commissioners shall make such allowance for board, nursing, medical attendance and burial expenses as they may deem just and equitable; *Provided*, That claims for such services shall be presented and acted upon in the same manner as other claims against the county. *Provided further*, That said commissioners may, in their discretion, contract with some suitable person or persons, for such services, in the case of all sick persons coming within the provisions of this section. [C. L. 1876, ch. 93, § 3.]

Residence of pauper as affecting relief.

SEC. 1956. When any application is made by any pauper to the county commissioners of any county for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county for ninety days immediately preceding the day upon which said application is made, and if such evidence is satisfactory, said commissioners may, in their discretion, provide the relief specified in this chapter, but if the contrary appears, they may provide for the transportation of such pauper from this territory, or may provide for his relief. [C. L. 1876, ch. 93, § 4.]

Each county to care for its paupers.

SEC. 1957. If any person shall become chargeable in any county in which he did not reside at the commencement of the ninety days aforesaid, he shall be cared for by the county commissioners of the county where he may be found. And it shall be the duty of the county clerk of said county to send notice by mail to the county clerk of the county in which such person has his permanent residence, that said person has become chargeable as a pauper, and requesting the authorities of said last named county, to remove said pauper forthwith, and to pay the expenses incurred by reason of the care aforesaid. If any such pauper, by reason of sickness or disease, or through neglect of the proper authorities aforesaid to remove him, or if, through any cause, he cannot be removed, then the county taking charge of such pauper may, by civil action, sue for, and recover from the county to which such pauper belongs, the sum expended for and on behalf of such pauper, and in taking care of the same. [C. L. 1876, ch. 93, § 5.]

Misdemeanor to bring pauper into county.

SEC. 1958. If any person shall bring and leave, or cause to be brought and left, any pauper or paupers in any county wherein such pauper or paupers do not lawfully reside, or shall bring and leave, or cause to be brought and left, in any county, any persons who from any disability will become chargeable upon said county, with intent to make such paupers or pauper a county charge, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, nor less than twenty-five dollars. [C. L. 1876, ch. 93, § 6.]

Authorities not to send paupers into other counties.

SEC. 1959. The county, town, or city, authorities of any county, town or city, are hereby prohibited from either directly or indirectly transporting any pauper into any other county of this territory, except as provided in this chapter; *Provided*, That the provisions of this section shall not apply to the transportation of any pauper out of this territory, through any county thereof. [C. L. 1876, ch. 93, § 7.]

Disposition of effects of pauper decedent.

SEC. 1960. If at the time of or after, the death of any person in any county, in whose behalf money shall have been expended by said county, it shall appear that he died possessed of money or property not exceeding one hundred dollars in value, the county commissioners of said county shall take possession of said money and property, and shall immediately thereafter cause the relatives of such deceased person, if known, to be notified of the amount expended by said county in his behalf, and also of the possession and description of said money and property; and if said relatives pay the amount so expended, said money and property shall be delivered to the relative or relatives making such payment; but if they refuse or fail to pay said amount within a reasonable time, then said commissioners shall sell said property, or cause the same to be sold. [C. L. 1876, ch. 93, § 8.]

Disposition of surplus arising from sale.

SEC. 1961. If the amount realized from such sale shall be more than sufficient to pay the expenses incurred by said county, the county commissioners thereof, shall, after deducting the amount of such expenses, pay such debts of said deceased person as may be due residents of this territory, as would have a prior claim if said property had been administered upon in the probate court of said county; the residue, if any, together with the amount of expenses aforesaid, shall be paid by said commissioners into the county treasury of said county. [C. L. 1876, ch. 93, § 9.]

County workhouses and hospitals.

SEC. 1962. The board of county commissioners of any county may, if they deem it best for the interests of the county, cause to be built or provided in their respective counties, workhouses for the accommodation and employment of such persons as may from time to time become a county charge, and such workhouses and paupers shall be under such rules and regulations as the county commissioners may deem just and proper. The hospital for the accommodation of the poor, the sick and the infirm in Laramie County, heretofore built and provided for according to law, shall be under the control of the board of the county commissioners of the said county, who shall have power to employ all officers, agents or other persons necessary to the proper management and maintenance of the same, and said board shall make all needful rules and regulations for the management of such hospitals and shall fix the conditions and terms of admission thereto and do all other acts which are necessary to carry out the provisions of this section. The county commissioners of Laramie County shall cause to be built or provide a poor house for the accommodation of the poor and paupers, and shall provide, by purchase, proper grounds and location therefor, and in such case shall provide for the support and maintenance of said poor house and the inmates; *Provided*, That no sum shall be expended for the building or providing of such poor house in excess of ten thousand dollars; such poor house shall be under control of said board of county commissioners, who shall have power to employ all officers, agents or other parties necessary to the proper management and maintenance of the same and said board shall make all needful rules and regulations for the management of such poor house and shall fix the conditions and terms of admission thereto and do all other acts which are necessary to carry out the provisions of this and the next succeeding section. [C. L. 1876, ch. 93, § 11. S. L. 1882, ch. 79, §§ 1 and 2. S. L. 1886, ch. 68, § 1.]

Tax levy for poor-house in Laramie County.

SEC. 1963. Whenever any such poor-house is built or in process of erection the said board of county commissioners shall levy upon the taxable property of the county for that year, in addition to the usual two mill tax, a tax sufficient to pay for the erection of said poor-house and the purchase of a site therefor. [S. L. 1886, ch. 68, § 2.]

Counties to pay for care of pauper insane.

SEC. 1964. The responsibility for the care, transportation and maintenance of the pauper insane belonging to counties of this territory, and the cost of the same shall rest with and be assumed and paid solely by the county in which such person or persons shall be adjudged insane. [S. L. 1882, ch. 53, § 1.]

Maintenance of insane confined at Mt. Pleasant, Iowa.

SEC. 1965. The responsibility for the care and maintenance of the pauper insane belonging to counties of this territory now confined at the "Iowa hospital for insane" at Mount Pleasant, Iowa, and elsewhere, and the cost of the same shall rest with the county in which such person or persons was adjudged insane, and from which such person or persons was sent as shown by the records in the office of the territorial auditor. [S. L. 1882, ch. 53, § 2.]

CHAPTER 2.

BURIAL OF INDIGENT VETERANS.

SECTION.
1966. Committee to superintend burial.
1967. Examination and burial—Report to commissioners.
1968. Payment of expenses by county.

Committee to superintend burial.

SEC. 1966. The board of county commissioners of the several counties of this territory shall appoint a sufficient number of suitable persons to look after and cause to be buried, in a decent and respectable manner, the body of any honorably discharged soldier, sailor or marine, who served in the army or navy of the United States during the late rebellion or any preceding war on behalf of the United States, who shall die leaving insufficient means to defray the necessary funeral expenses; *Provided, however*, That the amount so expended shall not exceed the sum of fifty dollars. [S. L. 1886, ch. 26, § 1.]

Examination and burial—Report to commissioners.

SEC. 1967. It shall be the duty of the persons so appointed in each county, before assuming charge and expense of the burial of the body of any soldier, sailor or marine in their said county, under the provisions of this chapter, to first satisfy themselves, by careful inquiry into and examination of all the circumstances in the case of such deceased soldier, sailor or marine, whose body they are called upon to bury, that he served in the army or navy of the United States during the late rebellion, or any preceding war in which the United States were a party, and was honorably discharged and died in their respective county, leaving insufficient means to defray the necessary funeral expenses; whereupon, if they are satisfied that such facts exist, they shall take charge of the body of such deceased soldier, sailor or marine, and cause it to be buried in the manner mentioned in the next preceding section, and thereupon they shall immediately report their action in the case to the county commissioners of their county, setting forth the facts as ascertained by them, together with the name, rank and command to which such soldier belonged at the time of his discharge, the date of his discharge, the character of his occupation immediately preceding his death, the date of his death and place of his burial, and also an accurately itemized statement of the expenses incurred in and about such burial, which report shall be duly attested by three reputable persons of full age residing in the proper county in which such soldier, sailor or marine resided at and immediately before his death, knowing the fact that such soldier, sailor or marine died without sufficient means to defray the necessary funeral expenses. [S. L. 1886, ch. 26, § 2.]

Payment of expenses by county.

SEC. 1968. It shall be the duty of the county commissioners of each county, upon receiving the reports and statements of expenses from their appointees, under the provisions of this chapter, to have transcribed in a book to be kept for the purpose, all the facts contained in such report and statements, and to draw warrants on the treasurer of their county for the payment of such expenses, not exceeding the sum of fifty dollars on each body buried, in accordance with the provisions of this chapter, to be paid out of the general funds of the county, and such warrants shall be made payable to the persons appointed under the provisions of this chapter, who shall have buried the bodies for which the warrants shall be drawn. [S. L. 1886, ch. 26, § 3.]

TITLE 37. PROBATE COURTS.

CHAPTER 1. TERMS AND GENERAL POWERS.
CHAPTER 2. EXECUTORS AND ADMINISTRATORS.
CHAPTER 3. DESCENT AND DISTRIBUTION OF PROPERTY.
CHAPTER 4. WILLS AND THE PROBATE THEREOF.
CHAPTER 5. GUARDIANS AND WARDS.
CHAPTER 6. ADOPTION.
CHAPTER 7. LUNATICS AND DRUNKARDS.
CHAPTER 8. JUVENILE DELINQUENTS.

CHAPTER 1.

TERMS AND GENERAL POWERS.

SECTION.
1969. Terms of court.
1970. Seal—Attesting process.
1971. When business may be transacted.
1972. Enforcement of judgments.
1973. Execution of process.
1974. Probate judge not to practice law.
1975. Furniture for probate office.
1976. Probate judge may administer oaths, etc.

SECTION.
1977. Proceedings to be on written or oral application.
1978. Further duties and powers.
1979. Office to be at county seat.
1980. Juries—Manner of empanelling, etc.
1981. Witnesses.
1982. Legalization of acts of probate judge in Laramie County.

Terms of court.

SEC. 1969. The judge of the probate court of each county shall attend at his office on the second Monday of January, April, July and October, and then and there hold a term of said court for the transaction of such business as the laws of the territory may require to be performed during term time, and may continue each term from day to day, until all the business therein pending shall be disposed of. [C. L. 1876, ch. 94, § 1.]

For terms of probate court, see also § 2712.

Seal -Attesting process.

SEC. 1970. The several probate courts of this territory shall each provide and keep a seal, and all process required to be issued shall bear date when issued, and shall be signed by the judge of such court, and be attested with the seal thereof. [C. L. 1876, ch. 94, § 2.]

When business may be transacted.

SEC. 1971. The probate court of each county shall be open at all reasonable hours of each day, for the transaction of business within its jurisdiction, and may, at any time, hear and determine all matters not required by law to be determined during term time. [C. L. 1876, ch. 94, § 3.]

Enforcement of judgments.

SEC. 1972. Orders of judgments for the payment of money may be enforced by execution, in the same manner as judgments for the payment of money in the district courts of this territory. [C. L. 1876, ch. 94, § 4.]

Execution of process.

SEC. 1973. Executions, warrants, and other process, issued by a judge of probate, shall be executed by the sheriff of the county in which such process may be issued, in the same manner, with the same powers, responsibilities, and fees, as if issued from the district court. [C. L. 1876, ch. 84, § 5.]

Probate judge not to practice law.

SEC. 1974. No judge of probate shall be counsel or attorney in any civil action for, or against, any executor, administrator, guardian, minor, trustee, or any other person over whom or whose accounts he would by law have jurisdiction, whether such accounts relate to the business of the estate or not. [C. L. 1876, ch. 94, § 6.]

Furniture for probate office.

SEC. 1975. The county commissioners of each county shall provide suitable cases for books and papers in the office of the probate judge, the expense of which shall be paid by the county. [C. L. 1876, ch. 94, § 7.]

Probate judge may administer oaths, etc.

SEC. 1976. The several judges of probate in this territory shall have full power and authority to administer oaths and affirmations in all cases where the same are required to be administered. They are also authorized to take acknowledgments of deeds and other instruments of writing, and solemnize marriages. [C. L. 1876, ch. 94, § 8.]

Proceedings to be on written or oral application.

SEC. 1977. All proceedings in the probate court shall be upon application of a party, verbal or written, and when verbal, entered in the records of the court, and when written they shall be filed. [C. L. 1876, ch. 94, § 9.]

Further duties and powers.

SEC. 1978. All other powers and duties of the probate courts, or judges thereof, shall be as prescribed by law. [C. L. 1876, ch. 94, § 10.]

Office to be at county seat.

SEC. 1979. Each judge of probate shall keep his office at the county seat of his county, for the purpose of attending to the duties of his office as may be reqired by law, and upon failure or refusal so to do after due and personal notice, such office shall be declared vacant, and a special election may be ordered by the board of county commissioners to fill such vacancy, or the same may be filled by appointment as now provided by law. [C. L. 1876, ch. 94, § 11. S. L. 1884, ch. 41, § 1.]

Juries—Manner of empannelling, etc.

SEC. 1980. In all cases where it shall be necessary to have a jury in any case in any probate court of this territory, such jury shall consist of six persons who shall be qualified to act as jurors in the district court of this territory, and such jury shall be empanelled in the same manner that juries are empanelled in an action tried before a justice of the peace and in all respects, the laws relating to trials in justices' courts shall govern in all matters whatsoever, relating to such juries when the same is applicable; except that in no case shall any jury fees be required to be paid in advance, unless it be so ordered by the judge of the probate court. [S. L. 1886, ch. 69, § 1.]

Witnesses.

SEC. 1981. The laws relating to trials in justices' courts shall apply, as far as applicable, to the summoning, fees, and paying of witnesses in probate courts. [S. L. 1886, ch. 69, § 2.]

Legalization of acts of probate judge in Laramie County.

SEC. 1982. All the acts of Charles F. Miller as judge of probate of Laramie County, in the adjourning of the probate court of said county for more than one day, instead of from day to day, as now required by law, are hereby declared binding upon all parties in interest and in law as though the said adjournment of said court had been made from day to day. [S. L. 1877, p. 90, § 1.]

CHAPTER 2.

EXECUTORS AND ADMINISTRATORS.

Sub-division 1. Appointment and removal.
Sub-division 2. Duties respecting money and property.
Sub-division 3. Duties respecting sale of real estate.
Sub-division 4. Allowance of demands against estates.
Sub-division 5. Accounting and final settlement.
Sub-division 6. Distribution of estates.
Sub-division 7. Proceedings against executors and administators.
Sub-division 8. Appeals.

SUB-DIVISION 1. APPOINTMENT AND REMOVAL.

SECTION.
1983. Granting letters.
1984. Where letters to be granted.
1985. Where proceedings to be had.
1986. Who ineligible as executor or administrator.
1987. To whom letters of administration granted.
1988. Application to be made in ten days.
1989. Citation of person entitled to administration.
1990. To whom letters testamentary granted.
1991. Co-executors to give bonds.
1992. Temporary administration.
1993. Affidavit of applicant for letters.
1994. Oath of administrator.
1995. Oath of temporary administrator.
1996. Oath of executor.
1997. Bond of administrator.
1998. Conditions of bond.
1999. Bond of executor, etc.
2000. Persons disqualified as sureties.
2001. Precautions as to sureties.
2002. Record and preservation of bonds.
2003. Letters to be recorded.
2004. Penalty for delivering letters without recording.
2005. Certified copies as evidence.
2006. Form of letters testamentary.
2007. Form of letters of administration.
2008. Form in other cases.
2009. Finding will revokes letters.

SECTION.
2010. Setting aside will revokes letters.
2011. Marriage of executrix or administratrix.
2012. Causes for revoking letters.
2013. Insufficient bond—Complaint.
2014. Complaint by co-surety.
2015. New bond.
2016. Effect of giving new bond.
2017. Failure to give new bond revokes letters.
2018. Additional security may be required.
2019. Resignation of letters—Procedure.
2020. Surrender of letters on resignation—Costs.
2021. Powers of remaining executor, etc.
2022. Letters *de bonis non.*
2023. Delivery of property to succeeding executor, etc.
2024. Successor to proceed against delinquents.
2025. Court may enforce settlement.
2026. Costs of citation.
2027. Inventory of partnership estate.
2028. Disposition of partnership property.
2029. Bond of surviving partner.
2030. Courts authority over surviving partner.
2031. When executor, etc., of deceased partner to administer.
2032. Additional bond in such cases.
2033. Partnership property to be exhibited for appraisement.
2034. Citation for refusal to exhibit.
2035. Executors may give joint or separate bonds.
2036. Non-residents cannot administer.

Granting letters.

Sec. 1983. The probate courts in vacation shall grant letters testamentary and of administration. [C. L. 1876, ch. 47, § 1.]

Where letters to be granted.

Sec. 1984. Letters testamentary and of administration, shall be granted in the county in which the mansion house or place of abode of the deceased is situated. If he had no mansion house, or place of abode, at the time of his death, and be possessed of lands, letters shall be granted in the county in which the land, or a part thereof lies. If the deceased had no mansion house, or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or where the greater part of his estate may be. If he died out of the territory, having no mansion house, place of abode, or lands in this territory, such letters may be granted in any county. If the deceased resided in one county, but had no estate or not a sufficient estate to justify the expenses of an administration therein, but had real or personal property, or had acquired interests in lands under the laws of the United States relating to the disposal of public lands, in another county or counties, such letters may be granted in the county in which such real or personal property, or land in which the deceased had acquired an interest, or the greater part thereof is situated. [C. L. 1876, ch. 47, § 2. S. L. 1886, ch. 74, § 1.]

When proceedings to be had.

Sec. 1985. All orders, settlements, trials and other proceedings, entrusted by this chapter to the probate court, shall be had or made in the county in which the letters testamentary, or of administration were granted. [C. L. 1876, ch. 47, § 3.]

Who ineligible as executor and administrator.

SEC. 1986. No judge of any probate court, in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator. A debtor of the deceased may be by him appointed executor, and if so named in the will, shall be competent to act as such; but no debtor of an intestate, shall be competent to act, and shall not be appointed as administrator of his estate. No married woman shall be executrix or administratrix, nor shall the executor of an executor, in consequence thereof, be executor of the first testator. [C. L. 1876, ch. 47, § 4.]

To whom letters of administration granted.

SEC. 1987. Letters of administration shall be granted, first to the husband or wife or to those who are entitled to distribution of the estate, or one or more of them as the court in vacation shall believe will best manage and improve the estate, giving preference to those in whom the greatest number and weight of interests concur, and creditors of the intestates and his estate shall be preferred to strangers. [C. L. 1876, ch. 47, § 5.]

Application to be made in ten days.

SEC. 1988. If no such persons apply for such letters within ten days after the death of the deceased, letters may be granted to any person whom the court shall consider most suitable. [C. L. 1876, ch. 47, § 6.]

Citation of person entitled to administration.

SEC. 1989. The probate court in vacation may in its discretion or on the application of any person interested, issue a citation to the persons entitled to administration, calling on them to administer, and if they fail to take out letters within ten days after the service of the citation, or if the persons entitled to preference file their renunciation thereof in writing with the probate court, letters of administration shall be granted to the person next entitled thereto. [C. L. 1876, ch. 47, § 7.]

To whom letters testamentary granted.

SEC. 1990. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will. [C. L. 1876, ch. 47, § 8.]

Co-executors to give bonds.

SEC. 1991. When there are two or more persons named co-executors in any will, none shall have authority to act as such or intermeddle, except those who give bond, unless otherwise provided in the will. [C. L. 1876, ch. 47, § 9.]

Temporary administration.

SEC. 1992. If the validity of a will be contested, or the executor be a minor, or absent from the territory, letters of administration shall be granted during the time of such contest, minority or absence, to some other person who shall take charge of the property and administer the same according to law, under the direction of the court, and account for, and pay and deliver, all the money and property of the estate to the executor, or regular administrator, when qualified to act. [C. L. 1876, ch. 47, § 10.]

Affidavit of applicant for letters.

SEC. 1993. Every applicant for letters of administration, at the time of application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will, as he verily believes. [C. L. 1876, ch. 47, § 11.]

Oath of administrator.

SEC. 1994. At the time that letters of administration are granted, the administrator shall take and subscribe an oath, that he will make a true and perfect inventory of, and faithfully administer, all the estate of the deceased, and pay the debts as far as the assets will extend, and account for, and pay, all assets which shall come to his possession or knowledge, according to law. [C. L. 1876, ch. 47, § 12.]

Oath of temporary administrator.

SEC. 1995. A similar oath, with such variations as the case may require, shall be taken by administrators of the goods remaining unadministered, and by administrators during the time of contest about a will, or the minority or absence of an executor. [C. L. 1876, ch. 47, § 13.]

Oath of executor.

SEC. 1996. Every administrator with the will annexed, and executor, at the time letters are granted to him, shall take an oath that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend, render just accounts and faithfully perform all things required by law touching such executorship or administration. [C. L. 1876, ch. 47, § 14.]

Bond of administrator.

SEC. 1997. The probate court in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities, residents, in the county, to the Territory of Wyoming, in such amount as the court shall deem sufficient, not less than double the amount of the estate. [C. L. 1876, ch. 47, § 15.]

Conditions of bond.

SEC. 1998. The condition of such bond shall be as follows: The condition of the above bond is, that if A. B., administrator of the estate of W. C., deceased, shall faithfully administer said estate, account for, pay and deliver, all money and property of said estate, and perform all other things touching said administration required by law, or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force. [C. L. 1876, ch. 47, § 16.]

Bond of executor, etc.

SEC. 1999. A similar bond, with such variations as the case may require, shall be given by all executors (unless otherwise provided in the will), and administrators, with the will annexed, or of the goods remaining unadministered, and all administrators during the time of a contest about a will, or of the minority or absence of an executor. [C. L. 1876, ch. 47, § 17.]

Persons disqualified as sureties.

SEC. 2000. No judge of probate, and no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as security in any bond required to be taken by this chapter. [C. L. 1876, ch. 47, § 18.]

Precautions as to sureties.

SEC. 2001. The probate court, in vacation, shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds, and to satisfy themselves, they may take testimony, or examine on oath, the applicant, or persons offered as his securities, which testimony and oath shall be filed with, or indorsed on, the bond. [C. L. 1876, ch. 47, § 19.]

Record and preservation of bonds.

SEC. 2002. The judge of the probate court shall record in a well bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the original in regular files. [C. L. 1876, ch. 47, § 20.]

Letters to be recorded.

SEC. 2003. All letters testamentary, and of administration, shall be recorded by the judge of the probate court, in a well bound book, kept for that purpose, before they are delivered to the executor or administrator, and the judge shall certify on the letters that they have been recorded. [C. L. 1876, ch. 47, § 21.]

Penalty for delivering letters without recording.

SEC. 2004. If any judge deliver such letters without recording the same, he may be fined by the court, and shall forfeit to the party injured, double the the damages occasioned by such default. [C. L. 1876, ch. 47, § 22.]

Certified copies as evidence.

SEC. 2005. Copies of such letters, and copies of the record thereof, certified under the seal of the probate court, shall be evidence. [C. L. 1876, ch. 47, § 23.]

Form of letters testamentary.

SEC. 2006. All letters testamentary, issued to executors under the provisions of this chapter, may be in the following form: Territory of Wyoming, County of ———— ss. The Territory of Wyoming to all persons to whom these presents shall come, greeting: Know ye that the last will and testament of A. B., deceased, hath, in due form of law, been exhibited, proved, and recorded in the office of the probate court for———— County, a copy of which is hereunto annexed; and, inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said A. B., at the time of his death, in whosesoever hands or possession the same may be found, and to perform and fulfill all such duties as may be enjoined upon him by said will, so far as there shall be property, and in general to do and perform all other acts which are now, or hereafter may be, required of him by law. In testimony whereof, I, G. P., judge of the probate court in and for the County of ————, have hereunto signed my name, and affixed the seal of said court, this ——— day of ———, A. D., 18——, G. P., judge of probate. [C. L. 1876, ch. 47, § 24.]

Form of letters of administration.

SEC. 2007. Letters of administration hereafter to be issued in this territory, may be in the following form: Territory of Wyoming, County of ———— ss. The Territory of Wyoming to all persons to whom these presents shall come, greeting: Know ye, that, whereas, A. B., late of the County of ————, died intestate, as it is said, having, at the time of his death, property in this territory, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed according to law, we do hereby appoint C. D., administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be, required of him by law. In testimony, whereof, I, G. P., judge of probate, in and for the County of ————, aforesaid, have hereunto signed my name and affixed the seal of said court, this ——— day of ———, A. D. 18——, G. P., judge of probate. [C. L. 1876, ch. 47, § 25.]

Form in other cases.

SEC. 2008. In all cases where letters of administration with the will annexed, letters of administration *de bonis non*, during minority or absence, shall hereafter be issued by the probate court in vacation, the same shall be issued in conformity to the foregoing forms as near as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case. [C. L. 1876, ch. 47, § 26.]

Finding will revokes letters.

SEC. 2009. If, after letters of administration are granted, a will of the deceased be found and probate thereof be granted, the letters shall be revoked, and letters testamentary, or of administration with the will annexed, shall be granted. [C. L. 1876, ch. 47, § 27.]

Setting aside will revokes letters.

SEC. 2010. If a will be proved, and letters thereon granted and the will be afterwards set aside, the letters shall be revoked, and other letters granted of the goods unadministered. [C. L. 1876, ch. 47, § 28.]

Marriage of executrix or administratrix.

SEC. 2011. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve upon him, but the marriage shall extinguish her powers and her letters be revoked. [C. L. 1876, ch. 47, § 29.]

Causes for revoking letters.

SEC. 2012. If any executor or administrator become of unsound mind, or be convicted of any felony or other infamous crime, or become a habitual drunkard, or otherwise incapable or unsuitable to execute the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the probate court, upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint and, if they find it just, shall revoke the letters granted. [C. L. 1876, ch. 47, § 30.]

Insufficient bond—Complaint.

SEC. 2013. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit, stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to, become insolvent, or has died, or has removed from the territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, or that the penalty of such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days notice of the complaint, the court shall examine into the complaint. [C. L. 1876, ch. 47, § 31.]

Complaint by co-surety.

SEC. 2014. If any person bound as security in the executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to, become insolvent, or has removed from the territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, and shall have given to the principal in such bond, at least ten days notice of such complaint, the court shall examine into the complaint. [C. L. 1876, ch. 47, § 32.]

New bond.

SEC. 2015. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given. [C. L. 1876, ch. 47, § 33.]

Effect of giving new bond.

SEC. 2016. Such additional bond, when given and approved, shall discharge the former sureties from any liability arising from any misconduct of the principal, after filing the same, and such former securities shall only be liable for such misconduct as happened prior to giving of such new bond. [C. L. 1876, ch. 47, § 34.]

Failure to give new bond revokes letters.

SEC. 2017. If such person fail to give such additional bond and security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time ceases. [C. L. 1876, ch. 47, § 35.]

Additional security may be required.

SEC. 2018. It shall be the duty of the probate court, whenever it shall appear necessary and proper, to order an executor or administrator to give other and further security, first giving such executor or administrator at least five days notice of such intended order, and if such executor or administrator shall fail to give such further security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease. [C. L. 1876, ch. 47, § 36.]

Resignation of letters—Procedure.

SEC. 2019. If any executor or administrator publish for four weeks in some newspaper in the county, a notice of his intention to apply to the probate court to resign his letters, and the court, on proof of such publication, shall believe that he should be permitted to resign, it shall so order. Said publication of notice in the newspaper, upon application to the probate court, for that purpose, may be dispensed with, and instead thereof the court may require said administrator to put ten written handbills in ten of the most public places in the county where he is conducting the business of his administration, at least twenty days before the term at which he intends to resign his administration. [C. L. 1876, ch. 47, § 37.]

Surrender of letters on resignation—Costs.

SEC. 2020. Such person shall then surrender his letters; his power from that time shall cease, and he shall pay the expenses of publication and all the proceedings on the application. [C. L. 1876, ch. 47, § 38.]

Powers of remaining executor, etc.

SEC. 2021. If there be more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered, or a part die, those who remain shall discharge all the duties required by law respecting the estate. [C. L. 1876, ch. 47, § 39.]

Letters de bonis non.

SEC. 2022. If all the executors or administrators of an estate die, or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration, and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators. [C. L. 1876, ch. 47, § 40.]

Delivery of property to succeeding executor, etc.

SEC. 2023. If any administrator or executor die, resign, or his letters be revoked, he, or his legal representatives, shall account for, pay and deliver, to his successor, or to the surviving or remaining executor or administrator, all money, real and personal property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator, or his legal representatives. [C. L. 1876, ch. 47, § 41.]

Successor to proceed against delinquents.

SEC. 2024. The succeeding administrator or the remaining executor or administrator may proceed at law against the delinquent and his securities or either of them, or against any other person possessed of any part of the estate. [C. L. 1876, ch. 47, § 42.]

Court may enforce settlement.

SEC. 2025. If any executor or administrator fail to make either annual or final settlement, as required by law, and do not show good cause for such failure after citation, the probate court shall order the executor or administrator to give notice when required, and to make such settlement and may enforce obedience to such order by attachment or may revoke his letters. [C. L. 1876, ch. 47, § 43.]

Costs of citation.

SEC. 2026. In all cases where citation or attachment may be issued against any executor or administrator for failing to settle his accounts, such delinquent shall pay all costs incurred thereby. [C. L. 1876, ch. 47, § 44.]

Inventory of partnership estate.

SEC. 2027. The executor or administrator of the estate of any deceased member of a co-partnership shall include in the inventory, which he is required by law to return to the probate court, the whole of the partnership estate, goods and chattels, rights and credits, appraised at its true value, as in other cases, but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest. [C. L. 1876, ch. 47, § 45.]

Disposition of partnership property.

SEC. 2028. The property thus appraised shall remain with the executor or administrator or be delivered over, as the case may be, to the surviving partner, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond, which he shall be required to give to the Territory of Wyoming in such sum and with such securities as is required in other cases of administration. [C. L. 1876, ch. 47, § 46.]

Bond of surviving partner.

SEC. 2029. The condition of such bond shall be, in substance, as follows: "The condition of the above bond is, that if A. B., surviving partner of the late firm of ———, shall use due diligence and fidelity in closing the affairs of the late co-partnership, apply the property thereof towards the payment of the partnership debts, render an account, upon oath to the probate court, whenever by it thereunto required, of all the partnership affairs, including the property owned by the late firm, and the debts due thereto, as well as what may have been paid by the survivor towards the partnership debts, and what may still be due and owing therefor, and pay over, within one year, unless a longer time be allowed by the probate court, to the executor or administrator, the excess, if there be any beyond satisfying the partnership debts, then the above bond to be void, otherwise to remain in full force." [C. L. 1876, ch. 47, §47.]

Court's authority over surviving partner.

SEC. 2030. The probate court shall have the same authority to cite such survivor to account, to adjudicate upon such account, as in case of an ordinary administrator, and the parties interested shall have the like remedies, by means of such bond, for any misconduct or neglect of such survivor, as may be had against administrators. [C. L. 1876, ch. 47, § 48.]

When executors, etc., of deceased partner to administer.

SEC. 2031. In case the surviving partner, having been duly cited for that purpose, shall neglect or refuse to give the bond required in the preceding sections, the executor or administrator on the estate of such deceased partner, on giving a bond, as provided in the following sections, shall forthwith take the whole partnership estate, goods and chattels, rights, and credits, into his own possession, and shall be authorized to use the name of the survivor in collecting the debts due the late firm, if necessary; and shall with the partnership property pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner his proportion of the excess, if there be any. [C. L. 1876, ch. 47, § 49.]

Additional bond in such cases.

SEC. 2032. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute that trust, with no unnecessary waste or expense, which bond may be enforced like other administration bonds. [C. L. 1876, ch. 47, § 50.]

Partnership property to be exhibited for appraisement.

SEC. 2033. Every surviving partner, on the demand of any executor or administrator of a deceased partner, shall exhibit to the appraisers, the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement, and, in case the administration thereof shall devolve upon such executor or administrator, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust. [C. L. 1876, ch. 47, § 51.]

Citation for refusal to exhibit.

SEC. 2034. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal, before the probate court, and unless he comply with such provisions, or show sufficient excuse for his omission, the probate court may commit him to the common jail of the county, there to remain until he consent to comply, or is discharged by due course of law. Or, if there be no jail, then to the sheriff, who shall keep him as other prisoners. [C. L. 1876, ch. 47, § 52.]

Executors may give joint or separate bonds.

SEC. 2035. When two or more persons are appointed executors, the court in vacation may take a separate bond, with securities from each of them, or a joint bond, with securities from all of them. [C. L. 1876, ch. 47, § 53.]

Non-residents cannot administer.

SEC. 2036. Letters of administration shall in no case be granted to a non-resident of this territory; and when an administrator shall become a non-resident of the county in which such letters were granted, the probate court, having jurisdiction of the estate of the testator, or intestate, of such administrator, shall revoke his letters. [C. L. 1876, ch. 47, § 54. S. L. 1886, ch. 4, § 1.]

Non-resident may be executor, see § 2239.

SUB-DIVISION 2. DUTIES RESPECTING MONEY AND PROPERTY.

SECTION.
2037. Collection of estate.
2038. Inventory and its requisites.
2039. Affidavit to inventory.
2040. Filing of inventory.
2041. Additional inventories.
2042. Witnesses to making inventory.
2043. Compensation of witnesses.
2044. Penalty for opening papers without witnesses.
2045. Concealing estate—Citation.
2046. Refusal to answer—Penalty.
2047. Trial of right of property.
2048. Delivery of effects enforced by attachment.
2049. Appraisement.
2050. Oath of appraisers.
2051. Form of appraisement.
2052. Filing of appraisement.
2053. Compensation of appraisers.
2054. Additional appraisements.
2055. Inventory and appraisement as evidence.
2056. Notice of appointment of executor, etc.
2057. Notice to unknown heirs.
2058. Executors, etc., to collect debts and appear in action.
2059. Actions commenced during life of decedent.
2060. Actions *ex-delicto*.
2061. Actions for slander, libel, etc., excepted.
2062. Debtor appointed executor—Debt not discharged.
2063. Absolute property of widow.
2064. Application for property by widow.

SECTION.
2065. Perishable goods to be sold.
2066. Sale of personal estate to pay debts, etc.
2067. Assignment of notes and bonds.
2068. Notice of sale.
2069. Direction of testator not to sell.
2070. Sale when heirs unknown.
2071. Private sale.
2072. Clerk of public sale.
2073. Duties of clerk of sale.
2074. Sale bill to be filed.
2075. Real estate may be leased.
2076. Repair of buildings, etc.
2077. Court to examine inventories, etc.
2078. Indispensable labor may be procured.
2079. Further labor may be authorized.
2080. Interest received to be assets.
2081. Court may require accounting of interest.
2082. Money statement required.
2083. When money may be loaned.
2084. Orders for speedy settlement of estate.
2085. Receipts and discharges.
2086. Property held on execution, disposal of.
2087. Application of proceeds.
2088. Limitation on last two sections.
2089. When part of personal estate ordered not sold.
2090. Disposition of same.
2091. Suspension of sale in vacation.
2092. When court may order sale after suspension.
2093. Court may grant continuances.

Collection of estate.

SEC. 2037. Every executor and administrator, immediately after receiving letters, shall collect and take into possession the goods, chattels, money, books, papers and evidences of debt or of title to any real or personal estate, except the property reserved as the absolute property of the widow. [C. L. 1876, ch. 47, § 55.]

Inventory and its requisites.

SEC. 2038. He shall make an inventory of all the real and personal estate, estate of the deceased, describing the quantity, situation and title of the real also the books and papers, the debts due or to become due to the deceased, the names of debtors, the date of contract, the amount of interest then due thereon, the rate of interest and such further description as will render it a perfect inventory of the estate. [C. L. 1876, ch. 47, § 56.]

Affidavit to inventory.

SEC. 2039. He shall annex to the inventory an affidavit, stating that it is a full inventory and description of all the money, goods, chattels and estate, real and personal, books, papers and evidences of debt and of title of the deceased and of all debts due and becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory. [C. L. 1876, ch. 47, § 57.]

Filing of inventory.

SEC. 2040. The inventory, with the affidavit, shall be filed in the office of the judge of the probate court within twenty days after the letters are granted. [C. L. 1876, ch. 47, § 58.]

Additional inventories.

SEC. 2041. If, after making the first inventory, any other real or personal estate of the deceased, come to his possession or knowledge, he shall file a similar additional inventory thereof. [C. L. 1876, ch. 47, § 59.]

Witnesses to making inventory.

SEC. 2042. At the time of appointing an administrator, or of granting letters testamentary to an executor, the court shall name two respectable householders of the vicinity of the last abode of the deceased, who are disinterested and of no kin to the administrator or executor, as witnesses to accompany, and aid the administrator or executor, in opening and examining the papers and money of the deceased, and in making an inventory thereof; and if they fail to attend, the court shall appoint others in their stead, so that two witnesses shall be present to attend the proceeding, before it shall be lawful for any executor or administrator to open or examine such papers or money, by virtue of his appointment. [C. L. 1876, ch. 47, § 60.]

Compensation of witnesses.

SEC. 2043. The probate court shall allow such witnesses a compensation for such duties, not exceeding that allowed to appraisers. [C. L. 1876, ch. 47, § 61.]

Penalty for opening papers without witnesses.

SEC. 2044. If any administrator or executor open or examine the papers or money of the deceased, without the publicity and attestation provided in this title, he shall forfeit and pay to the persons entitled to the estate, a sum not exceeding five thousand dollars, to be recovered before the probate court. [C. L. 1876, ch. 47, § 62.]

Concealing estate—Citation.

SEC. 2045. If the executor or administrator, or other person interested in any estate, file an affidavit in the probate court, stating that the affiant has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, moneys, books, papers or evidences of debt of the deceased, the probate court may cite such person to appear before them, and compel such appearance by attachment, and examine him and other witnesses on oath, for the discovery of the same. [C. L. 1876, ch. 47, § 63.]

Refuse to answer—Penalty.

SEC. 2046. If any person refuse to answer proper interrogatories, the court may commit him to jail until he answer, or be discharged by due course of law. [C. L. 1876, ch. 47, § 64.]

Trial of right of property.

SEC. 2047. If any person charged and cited as aforesaid, shall appear, and in his answers to the interrogatories, deny the right of the executor or administrator to such goods, chattels, moneys, books, papers or evidences of debt, the right thereof shall be tried by a jury, or if neither party require a jury, by the court in a summary manner, and judgment shall be rendered according to the right, and for costs. [C. L. 1876, ch. 47, § 65.]

Delivery of effects enforced by attachment.

SEC. 2048. If any person be convicted of unlawfully detaining such goods, chattels, money or effects, books, papers, or evidences of debt, the court may compel the delivery thereof by attachment. [C. L. 1876, ch. 47, § 66.]

Appraisement.

SEC. 2049. After having collected the personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county. [C. L. 1876, ch. 47, § 67.]

Oath of appraisers.

SEC. 2050. Before entering on their duties, the appraisers shall make an affidavit, stating that they are not interested, nor of kin to any person interested in the estate, as heir or devisee, and that they will, to the best of their ability, view and appraise the present estate to them produced. [C. L. 1876, ch. 47, § 68.]

Form of appraisement.

SEC. 2051. The appraisers shall view and appraise such property, and make a list specifying each article appraised, its value and total amount of the appraisement, which shall be signed by the appraisers, or two of them. [C. L. 1876, ch. 47, § 69.]

Filing of appraisement.

SEC. 2052. The appraisement and affidavit, shall be filed in the office of the judge of the probate court, within thirty days after the letters are granted. [C. L. 1876, ch. 47, § 70.]

Compensation of appraisers.

SEC. 2053. Each appraiser shall receive from the estate three dollars per day for his attendance. [C. L. 1876, ch. 47, § 71.]

Additional appraisements.

SEC. 2054. Every executor or administrator shall cause similar appraisements to be filed of all personal estate, which shall come to his possession after the first appraisement. [C. L. 1876, ch. 47, § 72.]

Inventory and appraisement as evidence.

SEC. 2055. Inventories and appraisements may be given in evidence, but shalt not be conclusive for or against any executor or administrator, but other evidence may be introduced to vary the effect thereof. [S. L. 1876, ch. 47, § 73.]

Notice of appointment of executor, etc.

SEC. 2056. Within thirty days after letters are granted, the executor, or administrator, shall publish in some newspaper in the county, and if there be no newspaper published in the county, then in some newspaper of general circulation in the territory, and publish therein for three weeks, a notice that letters testamentary, or of administration, have been granted to him, stating the date, and requiring all persons having claims against the estate, to exhibit them for allowance to the executor, or administrator, within six months after the date of the letters, or they may be precluded from any benefit of such estate; and that if such claims be not exhibited within one year from the date of the letter, they shall be forever debarred. [C. L. 1876, ch. 47, § 74.]

Notice to unknown heirs.

SEC. 2057. When an estate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper, containing the name of the intestate, a description of his person, and the time and place of his death, the place of his nativity, if known, and the appraised amount of his estate. [C. L. 1876, ch. 47, § 75.]

Executors, etc., collect debts and appear in actions.

SEC. 2058. Executors and administrators shall collect all money and debts of every kind due to the deceased, and give receipts and discharges therefor, and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him. [C. L. 1876, ch. 47, § 76.]

Actions commenced during life of decedent.

SEC. 2059. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator. [C. L. 1876, ch. 47, § 77.]

Actions ex-delicto.

SEC. 2060. For all wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong-doer, such action may be brought by the person injured, or, after his death, by his executor or administrator against such wrong-doer, and after his death, against his executors or administrators, in the same manner and with like effect, in all respects as actions founded upon contracts. [C. L. 1876, ch. 47, § 78.]

Actions for slander, libel, etc., excepted.

SEC. 2061. The preceding section shall not extend to actions for slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator. [S. L. 1876, ch. 47, § 79.]

Debtor appointed executor—Debt not discharged.

SEC. 2062. If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands. [C. L. 1876, ch. 47, § 81.]

Absolute property of widow.

SEC. 2063. In addition to her portion of her deceased husband's estate, the widow shall be allowed to keep absolutely, for the use of herself and family, all the wearing apparel of the family, her wheels, looms, and other implements of industry; all yarn, cloth, meat, vegetables, groceries, and other provisions on hand, and provided, and necessary for the subsistence of the widow and her family for twelve months, and as many beds, with bedding, as shall be necessary for herself and the family of the deceased residing with her and under her control, of which an inventory shall be made by the executor or administrator, and filed in the probate court. [C. L. 1876, ch. 47, § 82.]

For further absolute property of widow, see § 2231.

Application for property by widow.

SEC. 2064. The widow shall apply for such property named in the preceding section, before the same be distributed or sold, and the property so delivered, shall in no case be liable for the payment of the debts of the deceased. [C. L. 1876, ch. 47, § 82.]

Perishable goods to be sold.

SEC. 2065. Every executor or administrator, after the appraisement, shall sell at public sale, all goods and chattels of the deceased that are liable to perish, be consumed or rendered worse by the keeping, except such as are reserved by the widow, giving such credit as he may think best, subject to approval of the probate court, and take bonds or notes, with good security of the purchaser. [C. L. 1876, ch. 47, § 84.]

Sale of personal estate to pay debts, etc.

SEC. 2066. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner, sell other personal estate, until the debts and legacies be all paid; but special legacies shall not be sold in any case, unless it be necessary for the payment of the debts. [C. L. 1876, ch. 47, § 85.]

Assignment of notes and bonds.

SEC. 2067. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees and distributees, in discharge of such an amount of their claims equal to the amount of such bond or note. [C. L. 1876, ch. 47, § 86.]

Notice of sale.

SEC. 2068. They shall give notice of the time and place of sale for three weeks, in some newspaper in the county, or by hand bills, put up in eight public places in the county where the sale is made. [C. L. 1876, ch. 47, § 87.]

Direction of testator not to sell.

SEC. 2069. If any testator directs his estate not to be sold, the same shall be reserved, unless such sale be necessary for the payment of debts. [C. L. 1876, ch, 47, § 88.]

Sale when heirs unknown.

SEC. 2070. When there are no known heirs or legal representatives, the administrator shall sell all personal estate of the deceased within one year after administration is granted. [C. L. 1876, ch. 47, § 89.]

Private sale.

SEC. 2071. If any executor or administrator apply to the probate court for permission to sell the personal estate of the deceased, or any part thereof, at private sale, and the court be satisfied that such sale would not be prejudicial to the persons interested in the estate, it may order such sale and prescribe the terms thereof. [C. L. 1876, ch. 47, § 90.]

Clerk of public sale.

SEC. 2072. In every public sale, the executor or administrator, shall employ a competent clerk, not interested nor of kin to any heir or devisee of the estate. [C. L. 1876, ch. 47, § 91.]

Duties of clerk of sale.

SEC. 2073. Such clerk shall keep a true account of the sales made, make a list of sales, specifying each article sold, the price and name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such executor or administrator, at the time specified. [C. L. 1876, ch. 47, § 92.]

Sale bill to be filed.

SEC. 2074. Such sale bill shall be filed by the executor or administrator in the office of the judge of the probate court, within ten days after the sale, and it shall be evidence in the same manner and with like effect as inventories. [C. L. 1876, ch. 47, § 93.]

Real estate may be leased.

SEC. 2075. Executors and administrators, under the direction of the probate court, shall lease the real estate for any term not more than three years and shall receive and recover the rents. [C. L. 1876, ch. 47, § 94.]

Repair of buildings, etc.

SEC. 2076. When any house, out-building, fence or other improvements on the real estate requires repairs, the probate court may, on the application of any person interested, order the executor or administrator to cause the necessary repairs to be made without prejudicing creditors. [C. L. 1876, ch. 47, § 95.]

Court to examine inventories, etc.

SEC. 2077. At every term the probate court shall examine all inventories, appraisements and sale bills filed since the last term to see if they have been made and filed according to law, and shall issue citations to compel all delinquents to comply with the law. [C. L. 1876, ch. 47, § 96.]

Indispensable labor may be procured.

SEC. 2078. If a person die, leaving horses or other stock that require attention, crops ungathered, property so exposed as to be in danger of loss in value, or work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor, the executor or administrator may, until the meeting of the probate court, procure such indispensable labor to be performed on the most reasonable terms. [C. L. 1876, ch. 47, § 97.]

Further labor may be authorized.

SEC. 2079. The probate court, on the application of any person interested, may in such cases authorize further labor to be performed, as the interest of the estate requires, and all sums thus paid, if approved by the court, shall be allowed as expenses of administration. [C. L. 1876, ch. 47, § 98.]

Interest received to be assets.

SEC. 2080. All interest received by executors or administrators on debts due to the deceased, shall be assets in their hands, and if they lend the money of the deceased, or use it for their private purposes, they shall pay interest thereon to the estate. [C. L. 1876, ch. 47, § 99.]

Court may require accounting of interest.

SEC. 2081. The probate court shall exercise an equitable control in making executors and administrators account for interest accruing to the estate, on account of money loaned by them belonging to the estate, or otherwise, and for that purpose may take testimony, or examine the executor or administrator on oath. [C. L. 1876, ch. 47, § 100.]

Money statement required.

SEC. 2082. Every executor and administrator, at the first term at which he is required to make settlement, shall render to the probate court a statement, on oath, of the amount of money of the estate actually on hand. [C. L. 1876, ch. 47, § 101.]

When money may be loaned.

SEC. 2083. If, on the return of the inventory, or at any other time, it shall appear to the satisfaction of the probate court that there is a surplus of money in the hands of the executor or administrator, that will not be shortly required for the administration or payment of debts, it shall have discretionary power to order him to lend out the money on such terms, and for such time as may be deemed best. [C. L. 1876, ch. 47, § 102.]

Orders for speedy settlement of estate.

SEC. 2084. The probate court may, at any time, make such orders as the interest of the estate may require, for the speedy collection of debts, or the sale or distribution of personal property. [C. L. 1876, ch. 47, § 103.]

Receipts and discharges.

SEC. 2085. All executors and administrators may give receipts and discharges for money received by them on account of the deceased, but if there be more than one executor or administrator, a majority shall join in such receipt or discharge, or they shall be void. [C. L. 1876, ch. 47, § 104.]

Property held on execution, disposal of.

SEC. 2086. If personal property shall be bound by the lien of an execution or executions, whether such execution or executions shall have been levied or not at the time of the death of the testator or intestate, the executor or administrator shall, nevertheless, inventory, cause to be appraised, and sell the same as if no such lien existed, except that a separate inventory, appraisement and sale bill of such property, shall be made and returned. [C. L. 1876, ch. 47, § 105.]

Application of proceeds.

SEC. 2087. The proceeds of the sale of such personal property shall be applied, under the direction of the probate court, in the following manner:

First—When there is but one execution, to the payment of such execution, and the residue, if any, shall be assets to be administered according to law;

Second—When there is more than one execution, the liens whereof are of even date, to the payment of such executions, and the residue, if any, shall be assets, to be administered according to law; but if such proceeds shall not be sufficient to pay the whole, then in proportion to their respective amounts;

Third—When there is more than one execution, the liens whereof are of uneven dates, and such proceeds shall not be sufficient to pay the whole, to the payment thereof, according to their priority of lien. [C. L. 1876, ch. 47, § 106.]

Limitation on last two sections.

SEC. 2088. The provisions of the two preceding sections shall not be construed to deprive the widow of the benefit of section two thousand and sixty-three, nor to deprive the demands classed in the first and second subdivision of section twenty-one hundred and thirty-two, of their precedence over all other demands against the estate of the deceased. [C. L. 1876, ch. 47, § 107.]

When part of personal estate ordered not sold.

SEC. 2089. In all cases where any person shall die, leaving a widow or other family, the probate court has power, if in its opinion it will not be prejudicial to creditors, and will be advantageous to such widow or others entitled to distribution in the estate, to order that no more of the personal estate shall be sold than will be sufficient to pay the debts; *Provided*, The probate court shall take good and sufficient security that the property shall be forthcoming to answer the demand of any creditor, or others concerned in the estate. [C. L. 1876, ch. 47, § 108.]

Disposition of same.

SEC. 2090. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such personal property as is ordered not to be sold, in possession of the widow or other family, who shall use and enjoy the same until the probate court shall order such property to be administered. [C. L. 1876, ch. 47, § 109.]

Suspension of sale in vacation.

SEC. 2091. If property is about to be sold in the vacation of the probate court, any judge of such probate court has power, upon the petition of the executor or administrator, or of any other person interested in the estate, to order the suspension of such sale until the next term of the probate court. [C. L. 1876, ch. 47, § 110.]

When court may order sale, after suspension.

SEC. 2092. In any case where the court has ordered that property shall not be sold, if it shall appear to the probate court that such property is likely to be injured or wasted, or that those interested therein would be benefited thereby, such court shall order that such estate be forthwith administered; and, in such cases, the rights of all persons interested shall be the same as if the order provided for in the second preceding section had not been made. [C. L. 1876, ch. 47, § 111.]

Court may grant continuances.

SEC. 2093. For good cause shown, the probate court may continue any matter or proceeding arising before it under this chapter on such terms as it may consider just. [C. L. 1876, ch. 47, § 112.]

SUB-DIVISION 3. DUTIES RESPECTING SALE OF REAL ESTATE.

SECTION.
2094. Sale of realty under will.
2095. When purchase of realty may be completed.
2096. When decedents interest to be sold.
2097. Relinquishment of same.
2098. Relinquishment of school lands.
2099. Redemption of mortgaged property.
2100. Sale of equity of redemption.
2101. Sale and relinquishment, by whom made.
2102. Petition for sale of realty to pay debts.
2103. Petition to show judgment liens.
2104. Application of proceeds of sale.
2105. Petition to state dates, etc , of judgment liens.
2106. Payment according to priority.
2107. Residue of proceeds to be assets.
2108. *Pro rata* payment of concurrent liens.
2109. Requisites of petition for sale of realty.
2110. When interested parties may petition—Notice.
2111. Duty of executor, etc., on receiving notice.
SECTION.
2112. Notice of application to sell.
2113. Order for sale.
2114. When personalty reserved and realty sold.
2115. Appraisement of realty.
2116. Affidavit of appraisers.
2117. Notice of sale—Publication.
2118. Place of sale.
2119. Restrictions upon sale.
2120. Report of sale.
2121. New sale ordered, if report not approved.
2122. Execution of deed upon approval of sale.
2123. Effect of deed.
2124. Petition for specific performance.
2125. Affidavit of petitioner.
2126. Notice to executor, etc.
2127. Order for specific performance.
2128. Execution of deed.
2129. Effect of deed.
2130. Proceedings when executor, etc., interested.
2131. Order for sale of realty without petition.

Sale of realty under will.

SEC. 2094. The sale and conveyance of real estate under a will, shall be made by the acting executor or administrator, with the will annexed, if no other person be appointed for that purpose by the will, or if such person fail to perform the trust. [C. L. 1876, ch. 47, § 113.]

When purchase of realty may be completed.

SEC. 2095. If any person die, having purchased real estate, and shall not have completed the payment, nor devised such estate, nor provided for the payment by will, and the completion of such payment would be beneficial to the estate and not injurious to creditors, the executor or administrator, by order of the probate court, may complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate. [C. L. 1876, ch. 47, § 114.]

For method of proceeding under this section, see § 3006.

When decedent's interest to be sold.

SEC. 2096. If the court believe that after the payment of debts, there will not be sufficient to pay for such real estate, the court may order the executor or administrator to sell all the right, title and interest of the deceased therein. [C. L. 1876, ch. 47, § 115.]

Relinquishment of same.

SEC. 2097. If such real estate has been purchased from individuals, the court may, if it believe it advantageous to the estate, order the same to be relinquished to such individual on the most advantageous terms that can be agreed upon. [C. L. 1876. ch. 47, § 116.]

Relinquishment of school lands.

SEC. 2098. If such real estate shall have been purchased from any officer authorized by law to sell school lands, the probate court may, in its discretion, order the same to be relinquished, and in such cases, the officer shall be authorized to accept of such relinquishment, and surrender the obligation of the deceased. [C. L. 1876, ch. 47, § 117.]

Redemption of mortgaged property.

SEC. 2099. If any person die, having mortgaged any real estate or mortgaged or pledged any personal property, or owing any equity of redemption, and shall not have devised the same or provided for the redemption of the same by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal assets, if it would be beneficial to the estate and not injurious to the creditors. [C. L. 1876, ch. 47, § 118.]

Sale of equity of redemption.

SEC. 2100. If such redemption would injure the estate or creditors or there would not be assets to redeem such estate after payment of debts, the court shall order all the right, title and interest of the estate to such property to be sold at public sale. [C. L. 1876, ch. 47, § 119.]

Sale and relinquishment, by whom made.

SEC. 2101. In cases of relinquishment of the interest of the testator or intestate under the provisions of the preceding sections of this title, and in all cases of the sale of the interest of the testator or intestate under the preceding sections, the executor or administrator shall be competent by deed to make such relinquishment or to convey to the purchaser all of the right, title and interest the testator or intestate had in and to such real estate at the time of his death. [C. L. 1876, ch. 47, § 120.]

Petition for sale of realty to pay debts.

SEC. 2102. If any person die and not have personal estate sufficient to pay his debts the executor or administrator shall file a petition to the probate court, stating the facts and praying for the sale of the real estate or so much thereof as will pay the debts. [C. L. 1876, ch. 47, § 121.]

Petition to show judgment liens.

SEC. 2103. If such real estate be bound by the lien of a judgment, the executor or administrator shall state that fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered. [C. L. 1876, ch. 47, § 122.]

Application of proceeds of sale.

SEC. 2104. The proceeds of the sale of such real estate, shall be first applied to the payment of such judgment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law. [C. L. 1876, ch. 47, § 123.]

Petition to state dates, etc., of judgment liens.

SEC. 2105. If such real estate be bound by the lien of several judgments, the executor or administrator shall state that fact in his petition, the dates and amounts of such judgments, and the names of the persons in whose favor the same were rendered. [C. L. 1876, ch. 47, § 124.]

Payment according to priority.

SEC. 2106. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments according to their priority of lien. [C. L. 1876, ch. 47, § 125.]

Residue of proceeds to be assets.

SEC. 2107. The residue of such proceeds, if any, shall become assets in the hands of the executor or administrator, to be administered according to law. [C. L. 1876, ch. 47, § 126.]

Pro rata payment of concurrent liens.

SEC. 2108. If the lien of such several jndgments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments in proportion to their respective amounts. [C. L.1876, ch. 47, § 127.]

Requisites of petition for sale of realty.

SEC. 2109. The petition to be filed according to the provisions of the preceding sections for the sale of real estate, shall be accompanied by a true account of his administration, a list of the debts due to, and by, the deceased, and remaining unpaid, and an inventory of the real estate and of the remaining personal estate, with its appraised value, and all the other assets in his hands, the whole to be verified by the affidavit of the executor or administrator. [C. L. 1876, ch. 47, § 128.]

When interested parties may petition—Notice.

SEC. 2110. If such executor or administrator do not make such application, any creditor, or other person interested in the estate, may make such application, given ten days' notice to the executor or administrator. [C. L. 1876, ch. 47, § 129.]

Duty of executor, etc., on receiving notice.

SEC. 2111. Every such executor or administrator, on or before the first day of the term of the court at which he is notified that such application will be made, shall file with the court, perfect accounts, lists and inventories, made out and verified as those required to accompany a petition by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment. [C. L. 1876; ch. 47, § 130.]

Notice of application to sell.

SEC. 2112. When such petition and such accounts, lists and inventories shall be filed, the court shall order that all persons interested in the estate be notified thereof, and that, unless the contrary be shown, on the first day of the next term of the court, an order will be made for the sale of the whole, or so much of such real estate, as will pay the debts of the deceased. Such notice shall be published for three weeks in some newspaper in the county, if there be one, if not, by three hand bills to be put up at three public places in the county in which the land lies, at least thirty days before the term of the court at which any such order will be made, in the discretion of the probate court. [C. L. 1876, ch. 47, § 131.]

Order for sale.

SEC. 2113. Upon proof of publication, the court shall hear the testimony, and may, if necessary, examine all the parties on oath touching the application, and make an order for the sale of such real estate, or any part thereof, in this territory, at public or private sale. [C. L. 1876, ch. 47, § 132.]

When personalty reserved and realty sold.

SEC. 2114. If any executor or administrator, or other person interested in any estate, file a petition, setting forth the facts, and describing the real and personal estate, and praying that the personal estate may be reserved, and real estate sold for the payment of debts, the same steps shall be taken, and the same proceedings and publication had as above directed upon a petition to sell real estate for the payment of debts, and the court may order the whole, or any part of the personal estate to be reserved; and the real estate, or any part of it may be sold at public or private sale. [C. L. 1876, ch. 47, § 133.]

Appraisement of realty.

SEC. 2115. Before any executor or administrator shall sell any real estate, or any interest therein, by order of any court, he shall have it appraised by three disinterested householders of the county in which it lies. [C. L. 1876, ch. 47, § 134.]

Affidavit of appraisers.

SEC. 2116. Such appraisers shall make an affidavit that they will, according to the best of their abilities, view and appraise the estate to them shown, and they shall view and appraise the same, and deliver to the executor or administrator, a certificate thereof, under their hands. [C. L. 1876, ch. 47. § 135.]

Notice of sale—Publication.

SEC. 2117. In all sales of real estate made by an executor or administrator, he shall cause a notice, containing a particular description of the estate to be sold, and stating the time and place and terms of sale, to be published in some newspaper in the county, for four weeks, and shall put up a copy of such notice in three public places in the county in which the sale is to be made, twenty days before the day of sale. If the probate court shall think it advisable, and so order, the publication of such notices in the newspaper may be dispensed with. [C. L. 1876, ch. 47, § 136.]

Place of sale.

SEC. 2118. All public sales of real estate, made by order of any court for the payment of debts, shall be made at the door of the court house or county building of the county in which such estate is situated, and shall be conducted openly by auction. [C. L. 1876, ch. 47, § 137.]

Restrictions upon sales.

SEC. 2119. No real estate, sold for the payment of debts, shall be sold at private sale for less than three-fourths of its appraised value, nor shall the executor or administrator, directly or indirectly become the purchaser of such real estate. [C. L. 1876, ch. 47, § 138.]

Report of sale.

SEC. 2120. At the next term of the probate court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement and a copy of the advertisement, which report shall be verified by affidavit, stating that he did not, directly or indirectly, purchase such real estate or any part thereof or any interest therein and that he is not interested in the property sold except as stated in the report. [C. L. 1876, ch. 47, § 139.]

New sale ordered if report not approved.

SEC. 2121. If such report and proceedings of the executor and administrator be not approved by the court, his proceedings shall be void and the court may order a new sale, upon which the same proceedings shall be had as upon the original order. [C. L. 1876, ch. 47, § 140.]

Execution of deed upon approval of sale.

SEC. 2122. If such report be approved by the probate court, such sale shall be valid and the executor or administrator shall execute, acknowledge and deliver to the purchaser a deed reciting the order of sale and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings and the consideration and conveying to the purchaser, and the right, title and interest which the deceased had in the same. [C. L. 1876, ch. 47, § 141.]

Effect of deed.

SEC. 2123. Such deed shall convey to the purchaser all the right, title and interest which the deceased had in such real estate at the time of his death, discharged from liability for his debts and shall be evidence of the facts therein recited. [C. L. 1876, ch. 47, § 142.]

Petition for specific performance.

SEC. 2124. If any testator or intestate shall have entered into contract, in writing, for the conveyance of any real estate, and shall not have executed the same in his lifetime, nor given power by will, to execute the same, the other party, wishing a specific execution of such contract, may file a petition to the probate court, setting forth the facts, and praying that an order may be made that the executor or administrator execute such contract specifically, by executing to him a deed for the same. [C. L. 1876, ch. 47, § 143.]

In connection with this section, see §§ 3003 to 3008.

Affidavit of petitioner.

SEC. 2125. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition. [C. L. 1876, ch. 47, § 144.]

Notice to executor, etc.

SEC. 2126. A notice of such application and a copy of the petition, shall be served on the executor or administrator, twenty days before the first day of the term at which it is to be made. [C. L. 1876, ch. 47, § 145.]

Order for specific performance.

SEC. 2127. If the court after hearing all parties, believe that specified performance of such contract ought to be made, it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their bill in chancery, to set aside such order for fraud or otherwise. [C. L. 1876, ch. 47, § 146.]

Execution of deed.

SEC. 2128. When any order for the specific execution of a contract shall be made, the executor or administrator shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate according to the order, and expressing therein the saving of the rights above named, according to the order, and stating the date of the order, and the court at which it was made. [C. L. 1876, ch. 47, § 147.]

Effect of deed.

SEC. 2129. Such deed shall be as effectual as if it had been executed by the deceased. [C. L. 1876, ch. 47, § 148.]

Proceedings when executor, etc., interested.

SEC. 2130. If any executor or administrator hold a bond, or any other instrument of writing, of the testator or intestate, for the conveyance of any real estate, which shall not have been completed within the lifetime of such testator or intestate, nor power by will be given to execute the same, the executor or administrator shall proceed against his co-executor or co-administrator, in the same manner as prescribed by this chapter in other cases; but if there be no co-executor or co-administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person to appear and manage the defense on the part of those interested, who shall have all the powers and perform the same duties required of executors or administrators, in such case, by this chapter. [S. L. 1876, ch. 47, § 149.]

Order for sale of realty without petition.

SEC. 2131. If, upon the settlement of the accounts of any executor or administrator, it appear that the personal estate is not sufficient to satisfy all demands established against such estate, the probate court may make such order as it may think necessary, for the sale of the real estate for that purpose, and the sale shall be conducted, and the same proceedings had in relation thereto, as is provided in this chapter in relation to the sale of real estate, for the payment of debts upon the petition of the executor or administrator, creditor or other person interested. [C. L. 1876, ch. 47, § 150.]

SUB-DIVISION 4. ALLOWANCE OF DEMANDS AGAINST ESTATES.

SECTION.
2132. Classification of demands.
2133. Claims barred after one year.
2134. Pending actions deemed exhibited demands.
2135. Action against executor, etc., deemed exhibited demands.
2136. Manner of exhibiting demands.
2137. Report of exhibited demands.
2138. Demand may be established by action.
2139. Jurisdiction of probate court over demands.
2140. Affidavit of claimant.
2141. Affidavit of claimant indebted to estate.
2142. When affidavit may be made by agent.
2143. Notice of intention to establish demand.
2144. Service of notice.

SECTION.
2145. Waiver of notice.
2146. Hearing by probate court.
2147. Depositions.
2148. When court to determine demand.
2149. Jury trial—Rebate on claims not due.
2150. Demand of executor, etc., how established.
2151. Costs, by whom paid.
2152. Court to keep abstract of demands.
2153. Classification of demands by court.
2154. Endorsement on demand.
2155. Order in which demands paid.
2156. Costs in suits begun within six months.
2157. When executor, etc., to appoint agent.
2158. Notice to agent.
2159. Improper allowance of demand—New trial.

Classification of demands.

SEC. 2132. All demands against the estate of any deceased person shall be divided into the following classes:

First—Funeral expenses and expenses of administration;

Second—Expenses of the last sickness, wages of servants, and demands for medicines and medical attendance, during the last sickness of the deceased.

Third—Judgments rendered against the deceased in his lifetime; but if any such judgments shall be liens upon the real estate of the deceased, and the estate shall be insolvent, such judgments, as are liens upon the real estate, shall be paid as provided in this title, without reference to classification, except the classes of demands mentioned in the first and second sub-divisions of this section, shall have precedence of such judgments;

Fourth—All demands, without regard to quality, which shall be legall exhibited against the estate within six months after the granting of the first letters on the estate;

Fifth—All demands thus exhibited within one year after letters granted. [C. L. 1876, ch. 47, § 151.]

Claims barred after one year.

SEC. 2133. All demands, not thus exhibited within one year, shall be forever barred, saving to infants, persons of unsound mind, imprisoned, or absent from the United States, three years after the removal of their disabilities. [C. L. 1876, ch. 47, § 152.]

Pending actions deemed exhibited demands.

SEC. 2134. All actions pending against any person at the time of his death, which, by law, survive against the executor or administrator, shall be considered demands legally exhibited against such estate, from the time such action shall be revived, and classed accordingly. [C. L. 1876, ch. 47, § 153.]

Actions against executor, etc., deemed exhibited demands.

SEC. 2135. All actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands legally exhibited against such estate, from the time of serving the original process on such executor or administrator. [C. L. 1876, ch. 47, § 154.]

Manner of exhibiting demands.

SEC. 2136. Any person may exhibit his demand against such estate, by serving upon the executor or administrator a notice, in writing, stating the nature and amount of his claim, with a copy of the instrument of writing or account upon which the claim is founded, and such claim shall be considered legally exhibited from the time of serving such notice. [C. L. 1876, ch. 47, § 155.]

Report of exhibited demands.

SEC. 2137. Every executor or administrator shall keep a list of all demands thus exhibited, classing them, and make return thereof to the probate court every six months, at the term at which he is to make settlement. [C. L. 1876, ch. 47, § 156.]

Demand may be established by action.

SEC. 2138. Any person having a demand against an estate, may establish the same by the judgment or decree of some court of record, in the ordinary course of proceeding, and exhibit a copy of such judgment or decree to the probate court. [C. L. 1876, ch. 47, § 157.]

If action commenced on claim within six months from date of administration, claimant shall pay costs, § 2156.

Jurisdiction of probate court over demands.

SEC. 2139. The probate court shall have jurisdiction to hear and determine all demands against any estate, and a concise entry of the order of allowance shall be made on the record of the court, which shall have the force and effect of a judgment. [C. L. 1876, ch. 47, § 158.]

Affidavit of claimant.

SEC. 2140. No probate court shall allow any demand against any estate when the estate is indebted to any claimant, after allowing all just credits and offsets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, he has given credits to the estate for all payments and offsets to which it is entitled, and the balance claimed is justly due. [C. L. 1876, ch. 47, § 159.]

Affidavit of claimant indebted to estate.

SEC. 2141. No probate court shall allow any demand against any estate when the claimant is indebted to said estate, after allowing all just credits and off-sets unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, he has given credits to the estate for all payments and off-sets to which it is entitled, and that his account or demand as presented, is correctly stated; and the affidavit in this section and the preceding one shall not be received as any evidence of the demand, but the same shall be established by competent legal testimony, before it is allowed or adjusted. [C. L. 1876, ch. 47, § 160.]

When affidavit may be made by agent.

SEC. 2142. The affidavit or oath required by the two preceding sections, may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing personally, the facts required to be sworn to by those sections. [C. L. 1876, ch. 47, § 161.]

Notice of intention to establish demand.

SEC. 2143. Any person desiring to establish a demand against any estate, shall deliver to the executor or administrator, a written notice containing a copy of the instrument of writing or account on which it is founded, and stating that he will present the same for allowance at the next term of the probate court. [C. L. 1876, ch. 47, § 162.]

Service of notice.

SEC. 2144. Such notice shall be served on the executor or administrator ten days before the beginning of such term of the court, and may be served by the party, his agent or attorney, or by any competent witness, who shall make affidavit to such service. [C. L. 1876, ch. 47, § 163.]

Waiver of notice.

SEC. 2145. The executor or administrator may appear in court and waive the service of any such notice. [C. L. 1876, ch. 47, § 164.]

Hearing by probate court.

SEC 2146. The probate court shall hear and determine all demands in a summary manner, without the form of pleading, and shall take the evidence of competent witnesses, or other legal evidence. [C. L. 1876, ch. 47, § 165.]

Depositions.

SEC. 2147. Any person may take depositions in support of his demand, at his own expense, if he first procure the written consent of the executor or administrator, and such depositions may be taken in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand. [C. L. 1876, ch. 47, § 166.]

When court to determine demand.

SEC. 2148. If the demands do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand. [C. L. 1876, ch. 47, § 167.]

Jury trial—Rebate on claims not due.

SEC. 2149. If the demand exceed twenty dollars, and either party require a jury, one shall be immediately summoned, and the trial shall be conducted in a summary manner, without the form of pleading; and when the demand is not due at the time of trial, the court or jury may adjust the same by rebating therefrom a sum equal to the legal rate of interest on similar paper per annum from the time of trial until due. [C. L. 1876, ch. 47, § 168.]

For manner of summoning and empanelling jury in probate court, see § 1980.

Demand of executor, etc., how established.

SEC. 2150. Any executor or administrator may establish a demand against his testator or intestate, by proceeding against his co-executor or co-administrator, in the manner prescribed for other persons; but if there be no co-executor or co-administrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defense on the part of the estate. [C. L. 1876, ch. 47, § 169.]

Costs, by whom paid.

SEC. 2151. When a demand shall be presented to the probate court for allowance, if the demand be allowed, the estate shall pay the costs; if disallowed, the party presenting the claim shall pay the costs. [C. L. 1876, ch. 47, § 170.]

Court to keep abstract of demands.

SEC. 2152. The judge of the probate court shall keep an abstract of all judgments of other courts filed, and of all demands established in the probate court against such estate, which shall show their amount, date, class, and to whom payable. [C. L. 1876, ch. 47, § 171.]

Classification of demands by court.

SEC. 2153. If any judgment of a court of record be filed in the probate court, and when demands are allowed against any estate in the probate court, such court shall determine its class, and shall make an entry thereof in his abstract, and when thus classed, the executor or administrator may satisfy such demand according to such classification. [C. L. 1876, ch. 47, § 172.]

Endorsement on demand.

SEC. 2154. When any such demand has been allowed, the judge shall indorse, on the back thereof, the amount allowed thereon, and the class to which it belongs, and deliver the same to the demandant. [C. L. 1876, ch. 47, § 173.]

Order in which demands paid.

SEC. 2155. All demands against any estate shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed, and no demand of one class shall be paid until all previous classes be satisfied; and if there be not sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts. [C. L. 1876, ch. 47, § 174.]

Costs in suits begun within six months.

SEC. 2156. If any person commence a suit of any kind, in any court, against an estate, within six months from the date of administration, he may recover judgment, but shall pay all costs. [C. L. 1876, ch. 47, § 175.]

When executor, etc., to appoint agent.

SEC. 2157. If any executor, or administrator, shall temporarily absent himself from this territory, he shall appoint an agent, in writing, for whose acts such executor, or administrator, and his sureties shall be responsible (and file such appointment in the office of the court having jurisdiction of his testator's or intestate's estate), to whom notice of demands against his testator's or intestate's estate, as provided in this chapter, may be given; and upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate. [C. L. 1876, ch. 47, § 176.]

Notice to agent.

SEC. 2158. Notice given to such agent, or filed, as aforesaid, among the papers relating to the estate against which the demand is claimed, shall be as effectual as if it had been given to the executor or administrator. [C. L. 1876, ch. 47, § 177.]

Improper allowance of demand—New trial.

SEC. 2159. If the executor or administrator shall, within four months after any demand shall have been allowed, upon notice given as prescribed in the two preceding sections, file in the office of the court having jurisdiction of the estate, the affidavit of himself or some other credible person, stating that the affiant has good reason to believe, and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance, and try the matter anew, and allow or reject such demand, as shall be right; and if, upon such new hearing, such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted. [C. L. 1876, ch. 47, § 178.]

SUB-DIVISION 5. ACCOUNTING AND FINAL SETTLEMENT.

SECTION.
2160. Record of accounts and settlements.
2161. Semi-annual reports.
2162. Estate docket.
2163. List of executors, etc., to be posted.
2164. Citation to delinquent executors, etc.
2165. Alias citation.
2166. Fine for delinquency.
2167. Enforcement of settlement.
2168. Manner of settling accounts.
SECTION.
2169. Proof of disbursements.
2170. Apportionment among creditors.
2171. Further apportionment—Preferred claims.
2172. Failure to pay claims—Execution.
2173. Citation to sureties of executor, etc.
2174. Judgment against surety.
2175. Notice of final settlement.
2176. When and how final settlement made.
2177. Credits to be allowed on final settlement.

Record of accounts and settlements.

SEC. 2160. The judge of each probate court shall provide well bound books, and enter therein the accounts and settlements of all executors and administrators made in the court, in such manner as to form a complete record of all such accounts settled in that court. [C. L. 1876, ch. 47, § 179.]

Semi-annual reports.

SEC. 2161. Every executor and administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the probate court at its first term, after the end of six months from the date of his letters, and at the corresponding term of such court every six months thereafter, until the administration be completed. [C. L. 1876, ch. 47, § 180.]

First report to contain statement of money on hand, § 2082.
Reports must contain a statement of exhibited demands, § 2137.
Accounting may be enforced, § 2025.

Estate docket.

SEC 2162. The judge of the probate court shall keep a docket, and enter therein a list of all executors and administrators who have not made final settlement of their accounts, the date of their letters and the term at which they are required to make settlement. [C. L. 1876, ch. 47, § 181.]

List of executors, etc., to be posted.

SEC. 2163. The judge shall put up in some conspicuous place in his office, ten days before each term, a list of the executors and administrators, whose settlements are required to be made at that term. [C. L. 1876, ch. 47, § 182.]

Citation to delinquent executors, etc.

SEC. 2164. If any executor or administrator fail to present such settlement, the judge shall immediately issue a citation, to any county in the territory, requiring him to present his accounts for settlement at the next term of the probate court, and show cause why an attachment should not issue against him for not exhibiting his accounts at the term at which he was required to settle. [C. L. 1876, ch. 47, § 183.]

Alias citation.

SEC. 2165. If such citation be not served, the judge shall issue an alias citation, which may be served, or may be published in some newspaper in this territory, one month before the return thereof. [C.L. 1876, ch. 47, § 184.]

Fine for delinquency.

SEC. 2166. If, after such service or publication, no cause to the contrary be shown, such executor or administrator may be fined by the probate court, not exceeding one hundred dollars, to the use of the county, and such executor or administrator shall be liable upon his bond for failing to settle. [C. L. 1876, ch. 47, § 185.]

Enforcement of settlement.

SEC. 2167. The probate court may revoke the letters of such delinquent, and may issue attachment and other process to compel such settlement, directed to any county in the territory, and in all such cases such delinquent shall pay costs. [C. L. 1876, ch. 47, § 186.]

Manner of settling accounts.

SEC. 2168. When an executor or administrator shall present his account for settlement, the probate court shall settle the same according to law, allow all reasonable charges for the expenses of administration, funeral expenses, and all disbursements and appropriations made by order of the court, and a reasonable compensation for the trouble and expenses of the executor or administrator. [C. L. 1876, ch. 47, § 187.]

Proof of disbursements.

SEC. 2169. Upon every settlement, the executor or administrator shall show that every claim for which disbursements have been made, has been allowed by the court according to law, or shall produce such proof of the demands as would enable the claimant to recover it in a suit at law. [C. L. 1876, ch. 47, § 188.]

Apportionment among creditors.

SEC. 2170. At every settlement the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator from all sources, and the amount of debts allowed against such estate; and if there be not sufficient to pay the whole of the debts and expenses of administration, the money remaining after paying the expenses of administration shall be apportioned among the creditors according to this chapter and the court shall order that such executor or administrator pay the claims allowed by the court according to such apportionment, reserving apportionments made on claims which remain undecided, until decision be had thereon. [C. L. 1876, ch. 47, § 189.]

Further apportionment—Preferred claims.

SEC. 2171. The probate court, upon every settlement, shall proceed in like manner until all the debts be paid or the assets exhausted; and if, upon such settlement, there shall be money enough to satisfy all demands of any one class legally exhibited against such estate, the court shall order the whole to be paid. [C. L. 1876, ch. 47, § 190.]

Failure to pay claims—Execution.

SEC. 2172. If any executor or administrator fail to pay any claim thus ordered to be paid according to the two preceding sections when demanded, the probate court, on application of such creditor, and being satisfied that such demand has been made, shall issue execution for the amount ordered to be paid and costs, against the property, goods, chattels and real estate of such executor or administrator. [C. L. 1876, ch. 47, § 191.]

Citation to sureties of executor, etc.

SEC. 2173. If any such execution be returned unsatisfied, the creditor may sue out of the probate court an order against any one or more of the securities of such executor or administrator, referring to the bond, the order of payment, the execution and return, and requiring such security to show cause why judgment should not be rendered against him for the amount so ordered to be paid and still unsatisfied. [C. L. 1876, ch. 47, § 192.]

Judgment against surety.

SEC. 2174. Such order may be directed to, and served in, any county in this territory, and if, upon the return thereof, no good cause to the contrary be shown, the court shall render judgment against such security for the amount unpaid, and costs, and award execution therefor. [C. L. 1876, ch. 47, § 193.]

Notice of final settlement.

SEC. 2175. If any executor or administrator wish to make final settlement, he shall publish for four week in some newspaper in this territory, a notice to all creditors and others interested in the estate, that he intends to make final settlement at the next term of the court. [C. L. 1876, ch. 47, § 194.]

When and how final settlement made.

SEC. 2176. If it appear to the court that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement, which shall be conducted as semi-annual settlements. [C. L. 1876, ch. 47, § 195.]

Court may enforce final settlement, and make orders to facilitate the same, §§ 2025 and 2084.

Credits to be allowed on final settlement.

SEC. 2177. At his final settlement, the court shall give credit to the executor or administrator, for debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debts was not really due to the estate, or that it has been balanced or reduced by off-sets in any court of competent jurisdiction, or the debtor was insolvent, or that, from any other cause, it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence. [C. L. 1876, ch. 47, § 196,]

SUB-DIVISION 6. DISTRIBUTION OF ESTATES.

SECTION.
2178. Distribution not to be made within six months.
2179. When to be made within one year.
2180. Order for distribution.
2181. When personalty sold and proceeds distributed.
2182. Notice of sale.
2183. Court to settle claims of distributees.
2184. Sale to distributee.
2185. Distributee to refund share to pay debts.
2186. Failure to refund—Judgment.
2187. Support of minor children.
2188. Payment to widow out of rents.
2189. When estate delivered to widow.
2190. When distributee's share may be loaned.
2191. When share paid into county treasury.
SECTION.
2192. Treasurer's receipt.
2193. Certificate to distributee.
2194. Disposition of unclaimed personalty.
2195. Rule of descent as to estate of non-resident.
2196. Distribution of non-resident's estate.
2197. Distribution when non-resident insolvent.
2198. Resident creditors to be paid before estate transmitted.
2199. Residents to be paid before foreign creditors.
2200. Payment to foreign creditors.
2201. Payment to be *pro rata*.
2202. Disposition of residue.
2203. Compensation of executors, etc.

Distribution not to be made within six months.

SEC. 2178. Executors and administrators shall not be compelled to make distribution, or pay legacies, until six months after the date of the letters, unless the legacies specified would be perishable, or subject to injury, if retained one year. [C. L. 1876, ch. 47, § 197.]

When to be made within one year.

SEC. 2179. No executor or administrator shall be compelled to pay legacies or make distribution within one year after the date of his letters, unless ordered to do so by the court, until bond and security be given by the legatee or distributee to refund his due proportion of any debt which may afterwards be established against his estate, and the costs attending the recovery thereof. But the widow shall not be required to give such bond before she receive the property selected by her under this title. [C. L. 1876, ch. 47, § 198.]

Order for distribution.

SEC. 2180. If, upon any settlement, it appear that there is sufficient money to satisfy all the demands against an estate, the court shall order the payment of legacies and distribution of shares, as in the case of debts, except that specific legacies shall be first satisfied. [C. L. 1876, ch. 47, § 199.]

When personalty sold and proceeds distributed.

SEC. 2181. If any personal property descend, and an equal division thereof cannot be made in kind, the probate court may order the sale of such personal property, (prescribing the time, place, manner and terms of sale), and cause the money to be distributed according to the rights of those entitled to distribution. [C. L. 1876, ch. 47, § 200.]

Notice of sale.

SEC. 2182. Each person entitled to distribution, not applying therefor, shall be notified in writing of such application ten days before such order shall be made; or if such person do not reside in this territory, a notice of such application shall be published in some newspaper in this territory, four consecutive weeks before such order shall be made. [C. L. 1876, ch. 47, § 201.]

Court to settle claims of distributees.

SEC. 2183. When such order for the sale of personal estate shall be made by the court, it shall settle the claims of the distributees, and order the person selling such property, to distribute the money arising therefrom, according to the rights of each person. [C. L. 1876, ch. 47, § 202.]

Sale to distributee.

SEC. 2184. If any distributee become a purchaser of such property, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase money, and the court shall allow the amount of such receipt as so much distributed under the order of the court. [C. L. 1876, ch. 47, § 203.]

Distributee to refund share to pay debts.

SEC. 2185. If, after the payment of legacies or distributions, it becomes necessary that the same, or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees or distributees, according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be insufficient to satisfy such debts. [C. L. 1876, ch. 47, § 204.]

Failure to refund—Judgment.

SEC. 2186. If any legatee or distributee fail to refund, according to such order, the court shall, on motion of the executor or administrator, ten days notice in writing having been given to the legatee or distributee, enter judgment for the amount apportioned to him. [C. L. 1876, ch. 47, § 205.]

Support of minor children.

SEC. 2187. The probate court, as occasion may require, may order such appropriations for the support of minor children of the deceased, not otherwise provided for, as will not prejudice the rights of creditors. [C. L. 1876, ch. 47, § 206.]

Payments to widow out of rents.

SEC. 2188. Until the widow's portion be assigned, the court shall order such sum to be paid to her out of the rent of real estate, as shall be in proportion to her interest in the real estate. [C. L. 1876, ch. 47, § 207.]

When estate delivered to widow.

SEC. 2189. If, upon the return of the inventory and appraisement, it appears to the court that the whole amount of the estate is not more than that to which the widow is by law entitled, without being subject to the payment of debts, and that there are no debts due the estate, or so small they would not defray the expenses of collection and of administration, the probate court may, in its discretion, make an order that such estate be delivered to the widow, and that all further advertisements, settlements and other proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with. [C. L. 1876, ch. 47, § 208.]

When distributee's share may be loaned.

SEC. 2190. If, upon final settlement, it appears that any legatee or distributee is non-resident, or from any other cause is not in a situation to receive his share, and give a discharge therefor, or does not appear by himself, or agent, to receive the same, the probate court shall order the executor or administrator to lend out the money, on good security, for such limited time as the court may direct, not exceeding one year. [C. L. 1876, ch. 47, § 209.]

When share paid into county treasury.

SEC. 2191. In all cases when the legatee or distributee shall not appear before the adjournment of the term of the probate court at which final settlement is made by the executor or administrator and claim his share, the probate court shall order the same to be paid into the county treasury. [S. L. 1877, p. 35, § 1.]

Treasurer's receipt.

SEC. 2192. When any share shall be paid into the treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall retain, and file the other with the judge of the probate court, ordering the share to be paid into the treasury, and the court shall credit the executor or administrator therewith. [C. L. 1876 ch. 47, § 211.]

Certificate to distributee.

SEC. 2193. When any legatee or distributee shall appear and claim any share paid into the treasury, the probate court before whom the final settlement was made, being first satisfied of his right, shall grant him a certificate, under its seal; and on presentation of the certificate to the treasurer, he shall pay him the amount. [C. L. 1876, ch. 47, § 212.]

Disposition of unclaimed personalty.

SEC. 2194. If, after the expiration of one year after the final settlement, there should remain in the hands of the executor or administrator, any personal property unclaimed by the legatees or distributees, the court shall order the same to be sold and the proceeds paid into the county treasury; and the same may be drawn therefrom in the manner provided in the preceding section. [C. L. 1876, ch. 47, § 213.]

Rule of descent as to estate of non-resident.

SEC. 2195. When administration shall be taken in this territory, on the estate of any person who, at the time of his decease, was an inhabitant of any other state or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, according to the laws of this territory, and his personal estate, according to his last will, according to the laws of his domicil; and if there should be no such will, his real estate shall descend according to the laws of this territory, and his personal estate shall be distributed and disposed of, according to the laws of the state or country of which he was an inhabitant. [C. L. 1876, ch. 47, § 214.]

Distribution of non-resident's estate.

SEC. 2196. Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this territory, the residue of the personal estate, if any, may be distributed and disposed of in the manner aforesaid, by the probate court in which the estate is settled, or may be transmitted to the executor or administrator, if there be any in the state or country where the deceased had his domicil, as the court, under the circumstances, shall think best. [C. L. 1876, ch. 47, § 215.]

Distribution when non-resident insolvent.

SEC. 2197. If such deceased person died insolvent, his estate found in this territory shall, as far as practicable, be so disposed of, that all his creditors, here and elsewhere, may receive an equal share, in proportion to their respective claims. [C. L. 1876, ch. 47, § 216.]

Resident creditors to be paid before estate transmitted.

SEC. 2198. To this end, his estate shall not be transmitted to the foreign executor or administrator, until his creditors, who are citizens of this territory, shall have received their just proportion that would be due to them if the whole of the estate of the deceased, wherever found, were divided among all the said creditors in proportion to their respective claims without preferring any one species of claim to another. [C. L. 1876, ch. 47, § 217.]

Residents to be paid before foreign creditors.

SEC. 2199. In such case, no creditor, not being a citizen of this territory, shall be paid out of the assets found here, until those who are citizens shall have received their just proportion as provided in the preceding section. [C. L. 1876, ch. 47, § 218.]

Payment to foreign creditors.

SEC. 2200. If there be any residue after such payment to the citizens of this territory, the same may be paid to any other creditors who shall duly have proved their claims here, in proportion to the amount due to each of them respectively. [C. L. 1876. ch. 47, § 219.]

Payments to be pro rata.

SEC. 2201. No one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors. [C. L. 1876, ch. 47, § 220.]

Disposition of residue.

SEC. 2202. The balance, if any, may be transmitted to the foreign executor, or administrator, or, if there be none such, it shall, after the expiration of one year from the appointment of the administrator, be distributed ratably among all the creditors, citizens and others, who shall have proved their claims in this territory. [C. L. 1876, ch. 47, § 221.]

Compensation of executors, etc.

SEC. 2203. Executors and administrators shall be allowed for their trouble, not exceeding ten per centum on the whole amount of personal estate and on the money arising from the sale of lands, with such additional allowance for leasing real estate and collecting and preserving the estate, as the probate court shall deem reasonable. [C. L. 1876, ch. 47, § 222.]

For further provisions concerning compensation, see § 2244.

SUB-DIVISION 7. PROCEEDINGS AGAINST EXECUTORS AND ADMINISTRATORS.

SECTION.
2204. Creditor may ask investigation of accounts
2205. Issue and trial.
2206. Judgment and costs.
2207. Amount recoverable.
2208. Action on bond for waste.
SECTION.
2209. Settlement not conclusive.
2210. Proceeds of execution, how applied.
2211. Person injured may sue on bond.
2212. Enforcement of probate orders.

Creditor may ask investigation of accounts.

SEC. 2204. If, upon the settlement of any executor, or administrator, there be not sufficient assets to pay all the demands against the estate, any creditor may suggest that he has not made a just account of the assets in his hands, and apply for an inquiry into the same. [C. L. 1876, ch. 47, § 223.]

Issue and trial.

SEC. 2205. Upon such application, the court shall direct an issue to be made up, whether there be waste or not, which shall be tried as demands against an estate. [C. L. 1876, ch. 47, § 224.]

Judgment and costs.

SEC. 2206. If no waste be found, the applicant shall pay the costs; but if waste be found, judgment shall be recorded in favor of the applicant against such executor or administrator, of his own proper estate, for the amount wasted, and costs, and the money collected shall be applied to the payment of the debt due to the applicant, and the residue shall be apportioned among the creditors. [C. L. 1876, ch. 47, § 225.]

Amount recoverable.

SEC. 2207. If it appears that such waste was committed wilfully and fraudulently, the applicant shall recover double the amount wasted, with costs, to be apportioned as aforesaid. [C. L. 1876, ch. 47, § 226.]

Action on bond for waste.

SEC. 2208. After final settlement of any estate found to be insolvent, any creditor, or other person interested therein, may bring a suit on the administration bond, and assign and prove, as a breach of the condition, any waste or mismanagement of the estate, and have judgment against the executor or administrator for the whole value of the assets wasted or mismanaged, as he could have done if they had been regularly accounted for, with costs. [C. L. 1876, ch. 47, § 227.]

Execution—Settlement not conclusive.

SEC. 2209. Upon such judgment, execution may issue against the private estate of such executor or administrator, and his settlement shall only be conclusive so far as he has applied the assets, pursuant to the apportionment made by the court for the payment of debts. [C. L. 1876, ch. 47, § 228.]

Proceeds of execution, how applied.

SEC. 2210. The proceeds of all executions or any judgments thus recovered shall be applied to the payment of the debt due to the person suing and the residue shall be apportioned among the creditors. [C. L. 1876, ch. 47, § 229.]

Person injured may sue on bond.

SEC. 2211. The bond of an executor or administrator may be sued on at the instance of any party injured, in the name of the territory, to the use of such party for the waste or mismanagement of the estate or other breach of the condition of such bond, and the actual waste or damage shall be assessed thereon. [C. L. 1876, ch. 47, § 230.]

Enforcement of probate orders.

SEC. 2212. The probate court, for disobedience to any order made in pursuance of this chapter, may issue attachment, imprison the body or proceed by sequestration of lands and goods, as fully as a court of chancery may do, and may issue their process for that purpose, directed to any county, and cause it to be served therein. [C. L. 1876, ch. 47, § 231.]

SUB-DIVISION 8. APPEALS.

SECTION.
2213. In what cases allowed.
2214. Time for taking—Notice.
2215. Affidavit on appeal.
2216. Appeal bond.
2217. Effect of appeal.
2218. Transcript to district court.
2219. Proceedings in district court.
2220. Transcript to original court.

In what cases allowed.

SEC. 2213. Appeals shall be allowed from the decision of the probate court to the district court, in the following cases:

First—On all demands against an estate exceeding ten dollars;

Second—On all settlements of executors and administrators;

Third—On all apportionments among creditors, legatees or distributees;

Fourth—On all orders directing the payment of legacies, making distribution, or making allowances to the widow;

Fifth—On all orders for the sale of personal estate, because distribution cannot be made in kind;

Sixth—On all orders for the sale of real estate;

Seventh—On judgments for waste;

Eighth—On proceedings to recover balances escheated to the territory or county;

Ninth—On revoking letters testamentary or of administration;

Tenth—On orders making allowances for the expenses of administration;

Eleventh—On orders for the specific execution of contracts;

Twelfth—On orders compelling legatees or distributees to refund, and in all other cases where there shall be a final decision of any matter arising under the provisions of this chapter. [C. L. 1876, ch. 47, § 232.]

Time for taking—Notice.

Sec. 2214. All appeals shall be taken during the term at which the decision complained of is made, or within ten days after the making of such decision. Notice of such appeal shall be given in open court, and entered on the record, or by written notice to the opposite party. [C. L. 1876, ch. 47, § 233.]

Affidavit on appeal.

Sec. 2215. The applicant for such appeal, his agent or attorney, shall file an affidavit that the appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court. [C. L. 1876, ch. 47, § 234.]

Appeal bond.

Sec. 2216. Every such appellant shall file in the court the bond of himself or some other person, in a sum with security approved by the court, conditioned that he will prosecute the appeal, and pay all debts, damages and costs that may be adjudged against him. This section shall not be so construed as to require any executor or administrator to enter into bond in order to entitle him to an appeal. [C. L. 1876, ch. 47, § 235.]

Effect of appeal.

Sec. 2217. After such affidavit and bond have been filed, the appeal shall be granted, but shall not be a supersedeas in any other matter relating to the administration of the estate, except that from which the appeal is specially taken. [C. L. 1876, ch. 47, § 236.]

Transcript to district court.

Sec. 2218. When such appeal is taken, the judge shall transmit to the clerk of the district court a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto. [C. L. 1876, ch. 47, § 237.]

Proceedings in district court.

Sec. 2219. Upon the filing of such transcript and papers in the office of the clerk of the district court, the court shall be possessed of the cause and shall proceed to hear, try and determine the same and without regarding any error, defect or other imperfection in the proceedings of the probate court. [C. L. 1876, ch. 47, § 238.]

Transcript to original court.

Sec. 2220. The clerk of the district court shall certify a transcript of the record and proceedings and the original papers to the court whence the appeal was taken, who shall proceed according to the decision of the district court. [C. L. 1876, ch. 47, § 239.]

CHAPTER 3.

DESCENT AND DISTRIBUTION OF PROPERTY.

SECTION.
2221. Rule of descent—Dower and courtesy abolished.
2222. Posthumous children to inherit.
2223. Inheritance by kindred of the half blood.
2224. Advancements—Probate judge to determine.
2225. When maintenance, etc., not an advancement.
2226. Alienage not to affect inheritance.

SECTION.
2227. Illegitimate children, inheritance by.
2228. Divorce not to affect inheritance.
2229. Apportionment and distribution—By whom made.
2230. Rule of descent from illegitimate person.
2231. Absolute property of widow.
2232. Widow may relinquish and take other property or money.
2233. Right of widow not affected by will.

Rule of descent—Dower and courtesy abolished.

Sec. 2221. Whenever any person having title to any real estate or property, having the nature or legal character of real estate or personal estate undisposed or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts in the following course and manner, namely: If such intestate leave a husband or wife and children, or the descendants of any children, him or her surviving, one-half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children, as hereinafter limited; if such intestate leave a husband or wife and no child nor descendants of any child, then the real and personal estate of such intestate shall descend as follows, to-wit: Three-fourths thereof to such surviving husband or wife, and one-fourth thereof to the father and mother of the intestate, or the survivor of them; *Provided*, That if the estate of such intestate, real and personal, does not exceed in value the sum of ten thousand dollars, and such intestate have a husband or wife and no child nor descendant of any child, then the whole thereof shall descend to and vest in the surviving husband or wife, as his or her absolute estate, subject to the payment of debts as aforesaid. Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other, save as herein provided. Except in cases above enumerated, the estate of any intestate shall descend and be distributed as follows:

First—To his children surviving, and the descendants of his children who ard dead, (the descendants, collectively, taking the share which their parent would have taken if living;)

Second—If there be no children, nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead, (the descendants, collectively, taking the share their parents would have taken if living,) in equal parts;

Third—If there be no children nor their descendants, nor father, mother, brothers, sisters, nor descendants of deceased brothers or sisters, nor husband nor wife, living, then to the grandfather, grandmother, uncles, aunts and their descendants, (the descendants taking, collectively, the share of their immediate ancestors) in equal parts. [C. L. 1876, ch. 42, § 1. S. L. 1877, p. 35, § 1.]

Posthumous children to inherit.

SEC. 2222. All posthumous children or descendants of the intestate shall inherit in like manner as if born in the lifetime of the intestate; but no right of inheritance shall accrue to any person other than the children or descendants of the intestate, unless they are in being, and capable in law of taking, as heirs, at the time of the intestate's death. [C. L. 1876, ch. 42, § 2.]

Inheritance by kindred of the half-blood.

SEC. 2223. Children, and descendants of children of the half-blood, shall inherit the same as children and descendants of the whole blood, but collateral relations of the half-blood shall inherit only half the measure of collateral relatives of the whole blood, if there be any of the last named class living. [C. L. 1876, ch. 42, § 3.]

Advancements—Probate judge to determine.

SEC. 2224. Where any of the children of the intestate shall have received in his lifetime, any real or personal estate, by way of advancement, and the other heirs desire it to be charged to him, the probate judge shall cite the parties to appear before him, shall hear proof upon the subject, and shall determine the amount of such advancement or advancements to be thus charged. [C. L, 1876, ch. 42, § 4.]

When maintenance, etc., not an advancement.

SEC. 2225. The maintenance, education or supply of money to a child under the age of majority, without any view to apportion or settlement in life, shall not be deemed an advancement under the last preceding section. [C. L. 1876, ch. 42, § 5.]

Alienage not to affect inheritance.

SEC. 2226. The alienage of the descendants shall not invalidate any title to real estate which shall descend from him or her. [C. L. 1876, ch. 42, § 5.]

Illegitimate children, inheritance by.

SEC. 2227. Illegitimate children shall inherit the same as those born in wedlock, if the parents subsequently intermarry, and such children be recognized after such intermarriage by the father, to be his illegitimate children, inherit from the mother and the mother from the children. [C. L. 1876, ch. 32. § 7.]

Divorce not to affect inheritance.

SEC. 2228. Divorces of husband and wife shall not affect the right of children personally together, to inherit their property. [C. L. 1876, ch. 42, § 8.]

Apportionment and distribution, by whom made.

SEC. 2229. Probate judges and administrators of the estate of persons dying intestate within this territory, shall apportion and distribute estates of intestates according to this chapter. [C. L. 1876, ch. 42, § 9.]

Rule of descent from illegitimate person.

SEC. 2230. The rule of descent of all property of whatsoever kind or nature, real and personal, of any bastard or illegitimate person dying intestate in this territory, and leaving property and effects therein, shall be as follows, to-wit: On the death of any such person intestate, his or her property, estate and effects, shall descend to, and vest in, the widow or surviving husband and children, as the property and effects of other persons, in like cases. In case of the death of any such illegitimate person leaving no children or descendants of a child or children, then the whole property and estate, rights, credits, and effects shall descend to, and vest in the widow or surviving husband. In case of any such illegitimate person leaving no widow, surviving husband or descendants, then the property and estate of such person shall descend to, and vest in, the mother and her children, and their descendants; to the mother one half, and the other half to be equally divided between her children and their descendants, the descendants of a child taking the share of their deceased parent or ancestors. In case of the death of any such illegitimate person leaving no heirs, as above provided, then the property and effects of whatsoever kind or nature, shall pass to, and vest in, the next of kin to the mother of such illegitimate person, in the same manner as the estate of a legitimate person, would, by law, pass to the next of kin. [C. L. 1876, ch. 42, § 10.]

Absolute property of widow.

SEC. 2231. If any decedent leaves a widow residing in this territory, in all cases she shall be allowed to have and retain, as her sole and separate property, one bed and bedding, wearing apparel of herself and family, two cows, her saddle and bridle, one horse, household furniture for herself and family, and also the same amount and species of property, real and personal, as is, or may be, by law exempt from execution. Said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall, in no case be subject to the payment of debts of the deceased. [C. L. 1876, ch. 42, § 11.]

For further absolute property of widow, see § 2363.

Widow may relinquish and take other property or money.

SEC. 2232. When an inventory shall have been made of the personal estate of any testator or intestate, the widow may relinquish her right to any, or all of the specified articles of property allowed to her by the preceding section, or in case the intestate shall not leave any, or all of the articles specified, in either case she shall be entitled to other property, or the value of the same in money, and it shall be the duty of the administrator or court of probate to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money, or other personal property at her election. [C. L. 1876, ch. 42, § 12.]

Right of widow not affected by will.

Sec. 2233. The right of a widow to her separate property shall in no case be affected by her renouncing, or failing to renounce, the benefit of the provisions made for her in the will of her husband, or otherwise. [C. L. 1876, ch. 42, § 13.]

CHAPTER 4.

WILLS AND THE PROBATE THEREOF.

SECTION.
2234. Who may make wills.
2235. Devise of land, how construed.
2236. After acquired property, when to pass under will.
2237. Will to be in writing—Subscribing witnesses.
2238. Revocation of will, how affected.
2239. Executors—Rights and bond of sole legatee.
2240. When court to appoint executors—Bonds.
SECTION.
2241. Custodian to produce will.
2242. Notice of proving will.
2243. Certificate of proof and allowance.
2244. Compensation of executors, etc.
2245. Suppressing or re-writing will—Penalty.
2246. Probate of foreign wills.
2247. All wills to be probated—Effect.
2248. Construction of words in this chapter.
2249. Application of this chapter.

Who may make wills.

Sec. 2234. Any person of full age and sound mind, may dispose by will of all his property, except what is sufficient to pay his debts or what is allowed by law to husband and family or wife and family. [S. L. 1882, ch. 107, § 1.]

Devise of land—How construed.

Sec. 2235. Every devise of land in any will shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will that the devisor intended to convey a less estate. [S. L. 1882, ch. 107, § 2.]

After acquired property, when to pass under will.

Sec. 2236. Any property acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator. [S. L. 1882, ch. 107, § 3.]

Will to be in writing—Subscribing witnesses.

Sec. 2237. All wills to be valid must be in writing, witnessed by two competent witnesses, and signed by the testator or by some person in his presence and by his express direction, and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will. No subscribing witness to any will can derive any benefit therefrom unless there be two disinterested and competent witnesses to the same, but if without a will such witness would be entitled to any portion of the testator's estate, such witness may still receive such portion to the extent and value of the amount devised. [S. L. 1882, ch. 107, § 4.]

Revocation of will, how effected.

Sec. 2238. No will or any part thereof shall be revoked unless by burning, tearing, cancelling or obliterating the same with the intention of revoking it, by the testator or some person in his presence and by his direction, or by some other will or codicil in writing, signed, attested and subscribed in the manner provided in this act for the execution of a will, excepting only that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator. The power to make a will implies the power to revoke the same. [S. L. 1882, ch. 107, § 5.]

Executors—Rights and bond of sole legatee.

SEC. 2239. The testator may name in his will any person or persons as executor or executors to carry into effect his will, but such executor or executors shall be residents and citizens of the United States, and whenever it shall appear to the probate judge having jurisdiction that any executor or trustee named in any will is not a resident of the territory, the probate judge shall require such executor or trustee to designate some resident of the territory as agent or attorney upon whom any order, notice or process issuing out of the probate court or other courts of the territory may be served, which service shall have the same force and effect as if served upon such person, non-resident executor or trustee in person, and if any non-resident executor or trustee fails to appoint such agent or attorney, the probate judge shall revoke his authority to act. If the person named as executor shall be also sole legatee, instead of the bond required by law of an executor, he may give a bond to the Territory of Wyoming in such sum and with such sureties as the probate judge may require, with a condition only to pay all the debts of the testator, and in such case he shall not be required to return an inventory or take the oath required by law of an executor, and no other administration shall be required. Upon the execution and approval of such bond the estate of the testator shall vest absolutely in the sole legatee, and the debts of the testator shall become personal charges against such legatee. Upon the breach of the condition of such bond suit may be instituted thereon at the instance of any creditor, in the name of the Territory of Wyoming, for the use of such creditor. This section shall apply to all wills hereafter admitted to probate in this territory. [S. L. 1886, ch. 4, §§ 1 and 2.]

When court to appoint executors.—Bonds.

SEC. 2240. If no executor is named in a will or if the executor or executors named therein fail to qualify and act within the time required by this title, then an executor shall be appointed by the probate judge to carry the will into effect, and if any person is appointed executor or trustee by will, and such person at the time of the probate of the will is a minor, or otherwise disqualified, the probate judge shall appoint an executor or executors to act until such disqualification is removed, and if any executor or trustee named in a will refuse to qualify as now required by law, within thirty days after the probate of the will, then the probate court shall appoint an executor or executors to carry the will into effect; *Provided*, That no bond or security shall be required of any executor or trustee if the will so provides. [S. L. 1882, ch. 107, § 7.]

Custodian to produce will.

SEC. 2241. Any person having custody of a will, shall as soon as he is informed of the death of the testator, file the same with the probate judge, who shall open and read the same, after the will is produced and read, a day shall be fixed for proving the same, which day may be postponed from time to time in the discretion of the court. [S. L. 1882, ch. 107, § 8.]

Notice of Proving will.

SEC. 2242. The probate court shall give notice of the time fixed for proving a will, by publishing the notice, signed by himself, and addressed: "To whom it may concern," in a daily or weekly newspaper published in the county where the will is filed, for four consecutive weeks, when the publication is made in a weekly newspaper, and for two consecutive weeks when the publication is made in a daily newspaper, the last publication of which shall be at least ten days before the time fixed for such hearing, but if no newspaper is published within the county, then the said notice shall be published in some newspaper of general circulation in such county to be designated by the probate judge. [S. L. 1882, ch. 107, § 9.]

Certificate of proof and allowance.

SEC. 2243. Wills when proved and allowed, shall have a certificate thereof endorsed on or annexed thereto, signed by the probate judge and attested by the seal of the probate court, and every will so certified or the record thereof, or the transcript of such record duly authenticated, may be read in evidence in all courts without further proof. When a will is proved and recorded, the court shall direct the will or an authenticated copy thereof, to be placed in the hands of the executor or trustees therein named or otherwise appointed. [S. L. 1882, ch. 117, § 10.]

Compensation of executors, etc.

SEC. 2244. Unless otherwise provided in the will executors, administrators and trustees shall be allowed the following commissions upon the personal estate sold or distributed by them, and for the proceeds of real estate sold for the payment of debts, which shall be received in full compensation for all their ordinary services. For the first, one thousand dollars, five per cent. For the overplus, between one thousand and five thousand dollars, two and one-half per cent. thereon. For any amount over five thousand dollars, one per cent. thereon. Such further allowance may be made by the probate court as may be actually necessary for extraordinary expenses and services. [C. L. 1882, ch. 107, § 11.]

For compensation, see also § 2203.

Suppressing or re-writing will—Penalty.

SEC. 2245. Any person who shall wilfully suppress or re-write any last will and testament or any codocil thereto, of any person deceased, or who having the custody of any such will and testament, shall wilfully fail or neglect to produce and deliver the same to the probate court having jurisdiction of its probate, within a reasonable time after the death of the testator thereof, with intent to injure or defraud any person interested therein, shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, and shall be liable to any party injured for all damages that may accrue by reason thereof. [S. L. 1882, ch. 107, § 12.]

Probate of foreign wills.

SEC. 2246. Wills probated in any other state, territory or district shall be admitted to probate in this territory on the production of a copy of such will and of the original record of probate thereof authenticated by the attestation of the judge or clerk of the court in which such probate was made, and by the seal of office of such officers, if they have a seal. All provisions of law relating to the carrying into effect of domestic wills after probate, shall so far as applicable apply to foreign wills admitted to probate in this territory. [S. L. 1882, ch. 107, § 13.]

All wills to be probated—Effect.

SEC. 2247. Wills, foreign or domestic shall not be carried into effect until admitted to probate as hereinbefore provided, and such probate shall be conclusive as to the due execution thereof, until set aside by an original or appellate proceeding. [S. L. 1882, ch. 107, § 14.]

Construction of words in this chapter.

SEC. 2248. Words in this chapter importing the singular number may be extended to several persons or the same class, and words importing the singular number may be construed as meaning the plural, and words importing the plural may be construed as meaning the singular, and words importing the masculine gender may be construed as meaning females. [S. L. 1882, ch. 107, § 15.]

Application of this chapter.

SEC. 2249. This chapter shall not be construed to affect the validity of any last will and testament heretofore executed. [S. L. 1882, ch. 107, § 16.]

CHAPTER 3.

GUARDIAN AND WARD.

SECTION.
2250. Natural guardian.
2251. Appointment of guardian.
2252. Guardian of estate.
2253. When parent to be appointed.
2254. Selection by minor.
2255. Bond and oath of guardian.
2256. Inventory of property.
2257. Guardian's authority over minor.
2258. General duties of guardian.
2259. Mortgage and sale of real estate.
2260. Petition to sell, etc.—Notice.
2261. Continuance of hearing.
SECTION.
2262. Court may direct reference.
2263. Additional bond required before sale.
2264. Costs of proceeding, by whom paid.
2265. Sale to be approved—Execution of deed.
2266. Rules governing sales.
2267. Action on guardian's bond.
2268. Annual accounting required.
2269. Delivery of effects on change of guardian.
2270. Property of non-resident minor.
2271. Appointment of foreign guardian.
2272. Bond of foreign guardian.
2273. Compensation of guardians.

Natural guardian.

SEC. 2250. The father is the natural guardian of the persons of his minor children. If he dies, or is incapable of acting, the mother becomes the guardian. [C. L. 1876, ch. 60, § 1.]

Appointment of guardian.

SEC. 2251. The natural, and actual guardian of any minor child may, by will, appoint another guardian for such minor. If without such will, both parents be dead or disqualified to act as guardian, the probate court may appoint one. [C. L. 1876, ch. 60, § 2.]

Guardian of estate.

SEC. 2252. Although the parents be living and of sound mind, yet if the minor has property not derived from either of them, a guardian must be appointed by the probate court to manage such property. [C. L. 1876, ch. 60, § 3.]

What parent to be appointed.

SEC. 2253. The father or, in case of his death, absence or incapacity, the mother may be appointed the guardian to take charge of the property of his minor child, if deemed by the court a suitable person for the purpose. [C. L. 1876, ch. 60, § 4.]

Selection by minor.

SEC. 2254. If the minor be over the age of fourteen years and of sound intellect, he may select his own guardian, subject to the approval of the court. [C. L. 1876, ch. 60, § 5.]

Bond and oath of guardian.

SEC. 2255. Guardians appointed to take charge of the property of the minor must give bond, with surety to be approved by the court, in a penalty double the value of the personal estate, and of the rents and profits of the real estate or the minor, conditioned for the faithful discharge of their duties as such guardians, according to law. They must also take an oath of the same tenor, as the condition of the bond. [C. L. 1876, ch. 60, § 6.]

Inventory of property.

SEC. 2256. Within twenty days after their appointment, they must make out an inventory of all the property of the minor which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the judge of the probate court. [C. L. 1876, ch. 60, § 7.]

Guardian's authority over minor.

SEC. 2257. Guardians of the persons of minors have the power and control over them that parents would have if living. [C. L. 1876, ch. 60, § 8.]

General duties of guardian.

SEC. 2258. Guardians of the property of minors must prosecute and defend for their wards. They must, also, in other respects, manage their interests under the direction of the court; they may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards. [C. L. 1876, ch. 60, § 9.]

Mortgage and sale of real estate.

SEC. 2259. When not in violation of the terms of a will by which a minor holds his real property, it may, under the direction of the probate court, be sold or mortgaged on the application of the guardian, either when such sale or mortgage is necessary for the minor's support or education, or when his interest will be thereby promoted by reason of the unproductiveness of the property, or of its being exposed to waste, or of any other peculiar circumstances. [C. L. 1876, ch. 60, § 10.]

Petition to sell, etc.—Notice.

SEC. 2260. The petition for that purpose, must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor, at least ten days prior to the time fixed for such application. [C. L. 1876, ch. 60, § 11.]

Continuance of hearing.

SEC. 2261. The court, in its discretion, may direct a postponement of the matter, and may order such further publication through the newspapers or otherwise, as it may deem expedient. [C. L. 1876, ch. 60, § 12.]

Court may direct reference.

SEC. 2262. It may, also, direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for. [C. L. 1876, ch. 60, § 13.]

Additional bond required before sale.

SEC. 2263. Before any such sale or mortgage can be executed, the guardian must give security to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold, or of the money to be raised by the mortgage, conditioned that he will faithfully perform the duties in that respect, and account for and apply all moneys received by him under the direction of the court. [C. L. 1876, ch. 60, § 14.]

Costs of proceeding, by whom paid.

SEC. 2264. When the application for the sale of property is resisted, the court may, in its discretion, award costs to the prevailing party, and may, when satisfied that there was no reasonable ground for making the application, direct the cost to be paid by the guardian from his own funds. [C. L. 1876, ch. 60, § 15.]

Sale to be approved—Execution of deed.

SEC. 2265. Deeds may be made by the guardian in his own name, but they must be returned to the court, and the sale or mortgage be approved before the same are valid. [C. L. 1876, ch. 60, § 16.]

Rules governing sales.

SEC. 2266. The same rules that are prescribed in the sale of real property by executors and administrators, shall be observed in the sales under the provisions of this chapter, as far as applicable. [C. L. 1876, ch. 60, § 17.]

Action on guardian's bond.

SEC. 2267. A failure to comply with any order of the court in relation to the guardianship, shall be deemed a breach of the condition of the guardian's bond, which may accordingly be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor, if necessary. The court may, also, commit him to jail until he complies with such order. [C. L. 1876, ch. 60, § 18.]

Annual accounting required.

Sec. 2268. Guardians of the property of minors must account, on oath, annually, or oftener, if required by the court. It may, also, direct them to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the records. [C. L. 1876, ch. 60, § 19.]

Delivery of effects on change of guardian.

Sec. 2269. Where a new guardian is appointed, the court may order the effects of the minor, which are in the hands of his predecessor, to be delivered up to such new guardian. [C. L. 1876, ch. 60, § 20.]

Property of non-resident minor.

Sec. 2270. The foreign guardian of any non-resident minor may be appointed the guardian of such minor, by the court of the county wherein he has any property, for the purpose of selling or otherwise controlling that and all other property of such minor within this territory. [C. L. 1876, ch. 60, § 21.]

Appointment of foreign guardian.

Sec. 2271. Such appointment may be made upon his filing in the office of the probate judge of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify like other guardians, except as in the next succeeding section is prescribed. [C. L. 1876, ch. 60, § 22.]

Bond of foreign guardian.

Sec. 2272. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign state, if the court is satisfied with the sufficiency of the amount of the security, it may dispense with the filing of an additional bond. [C. L. 1876, ch. 60, § 23.]

Compensation of guardians.

Sec. 2273. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for which the allowance was made must be entered upon the records of the court. [C. L. 1876, ch. 60, § 24.]

CHAPTER 2.

ADOPTION.

SECTION.

2274. Application for—Jurisdiction of probate judge.
2275. Consent necessary.
2276. Record of judges approval.
2277. Effect of adoption.
2278. Discretion of probate judge.
2279. Absent parents to consent in writing.
2280. Special term of adoption and record thereof
2281. Legalization of certain adoptions.
2282. Authority of county commissioners concerning abandoned or orphan children.
2283. Parents may reclaim children.
2284. Penalty for abandoning child.
2285. Liability to civil action for abandonment.
2286. Name and legal status of adopted child.

Application for—Jurisdiction of probate judge.

Sec. 2274. Any parent willing to relinquish all right to his or her minor child to any other person willing to adopt the same, shall make application to the judge of probate of the county in which such parent resides; and if such judge of probate, after due investigation, shall be satisfied that the person making said application is entitled to make such relinquishment, and that the person proposing to adopt such child is a suitable person to assume the relation of parent, and that the consent of both parties to such adoption is mutual and voluntary, he shall enter of record in the records of his office, the fact of such application and consent, with his approval of such agreement and adoption. [C. L. 1876, ch, 2, § 1. S. L. 1882, ch. 26, § 3.]

Consent necessary.

Sec. 2275. Any person may appear before the judge of probate of the county where he or she resides and offer to adopt any minor child as his or her own; *Provided*, Such minor and his or her parents, if living, or guardian, if any, or county commissioners, as hereafter provided, shall appear and consent to such adoption. [C. L. 1876, ch. 2, § 2.]

Record of judges approval.

SEC. 2276. In all cases where an offer is made to adopt any minor, and consent obtained, as provided in the last preceding section, the judge of probate, after due investigation, if satisfied as provided in section twenty-two hundred seventy-four, shall make a like entry of record as therein specified, with his approval of such adoption. [C. L. 1876, ch. 2, § 3. S. L. 1882, ch. 26, § 3.]

Effect of adoption.

SEC. 2277. Upon the approval of said judge of probate being obtained as aforesaid, the parent or guardian of such minor child shall cease to have any control whatever over the person of such child so relinquished, or right to reclaim the same; and the person adopting such child shall exercise all the rights of a parent the same as if such child was the legitimate offspring of such person, and shall be subject to all the liabilities incident to that relation. [C. L. 1876, ch. 2, § 4.]

Discretion of probate judge.

SEC. 2278. If the judge of probate shall be satisfied, after due investigation, that any person proposing or agreeing to adopt any minor child is not a suitable person to assume the relations of parent to such minor, he shall refuse to approve such adoption, and shall enter such refusal in the records of his office. [C. L. 1876, ch. 2, § 5.]

Absent parents to consent in writing.

SEC. 2279. In case the parent of any child is a non-resident of this territory, or shall have removed from the county in which his or her child may be at the time it is proposed to adopt the same as aforesaid, the written consent of such parent, properly acknowledged, shall be obtained and filed with said judge of probate, which shall have the same effect as if such parent were personally present and consented to such adoption. And said judge of probate shall note the filings of such written consent in his record of approval, and the like proceedings shall be had as if such parent were present. [C. L. 1876, ch. 2, § 6.]

Special terms of adoption and record thereof.

SEC. 2280. The contracting parties in all cases of adoption may also, in addition to the foregoing proceedings, execute an agreement particularly specifying therein the terms of such adoption, which shall be recorded in the recorder's office of the proper county, and when so recorded, it shall be binding upon both parties thereto, and the original, or certified copy thereof, shall be received as evidence in all proceedings relating to such adoption. [C. L. 1876, ch. 2, § 7. S. L. 1882, ch. 26, § 3.]

Legalization of certain adoptions.

SEC. 2281. In all cases where a written agreement has heretofore been executed between the parents of pny minor child and the person adopting the same, such agreement is hereby legalized and both parties thereto shall be legally bound by the provisions of section twenty-two hundred and seventy-seven, except that the approval of the judge of probate shall not in such cases be necessary; *Provided*, That if said agreement has not been recorded in the recorder's office of the proper county, said parties, or either of them, shall cause the same to be so recorded before such adoption shall be legalized, as herein provided. [C. L. 1876, ch. 2, § 8.]

Authority of county commissioners concerning abandoned or orphan children.

SEC. 2282. Where both the parents of any minor child are dead and there are no relatives of such minor known, or being unwilling to take charge of and assume control of such child, the county commissioners of the proper county, upon information or otherwise, may provide for the adoption of such child in the same manner as the parent, if living, could under the provisions of this chapter. In any case of parents abandoning their children without providing for their support and education, the county commissioners shall have the same authority to act as in case of the parents' death; *Provided*, That if the residence of the parents is known the county commissioners shall notify them to take away or provide for their children, and if the parents do not claim such children within three months after such notice is given, the county commissioners shall have authority to provide for the children's adoption as in case of the parents' death, or to bind them out to suitable persons under a written agreement for a certain number of years, a copy of such agreement to be approved and filed with the probate judge of the county. [C. L. 1876, ch. 2, § 9. S. L. 1879, ch. 1, § 1.]

Parents may reclaim children.

SEC. 2283. Parents and relatives may reclaim their children after such action has been taken, by appearing before the judge of probate of the county and giving him satisfactory evidence of their ability or bond for the support of such children in the future, and by paying into the county treasury the amount of expenses incurred by the county in caring for them, and by paying to the parties having adopted or taken them in charge a reasonable compensation for their support while in charge of such parties; *Provided*, That such reclamation shall be made with the consent of the parties having adopted or taken them in charge, and not otherwise. [S. L. 1879, ch. 1, § 2.]

Penalty for abandoning child.

SEC. 2284. Any person having the natural or lawful charge of any minor child under the age of sixteen years, who shall wilfully abandon such child so that such child becomes a charge upon the county wherein such abandonment took place, shall be deemed guilty of a misdemeanor, and upon conviction, be fined in any sum not exceeding one hundred dollars or imprisoned in the county jail for a period of time sufficient to pay such fine, at the rate of one dollar per day, should such fine not be paid. [S. L. 1879, ch. 1, § 3.]

Liability to civil action for abandonment.

SEC. 2285. If any person having the natural or legal charge of any such child, shall abandon such child, so that such child shall become a charge upon the county wherein such abandonment took place, the person so abandoning such child shall be liable to a civil action by attachment without undertaking, by the board of county commissioners, for all expenses that may be, or have been incurred by such county in consequence of such abandonment. The affidavit for attachment and petition in the district court, or summons, if the action is in a court of a justice of the peace, shall allege that the person so abandoning such minor child was a person able to support it, and if the proof shall show that the ability of such person was equal to that of any other person in the community with means no greater than of the person so abandoning such child, the allegation of ability to support such child shall be deemed proved; *Provided*, That the defendant in such action may give in evidence sickness or other cause tending to lessen his or her ability to supprrt such child. [S. L. 1879, ch. 1, § 4.]

Name and legal status of adopted child.

SEC. 2286. Minor children, adopted as aforesaid, shall assume the surname of the persons by whom they are adopted, and shall be entitled to the same rights of person and property as children or heirs-at-law of the persons thus adopting them, unless the rights of property should be excepted in the agreement of adoption. [C. L. 1876, ch. 2, § 10.]

CHAPTER 7.

LUNATICS AND DRUNKARDS.

SECTION.
2287. Application for inquisition.
2288. Court may act in vacation.
2289. Person may be brought into court.
2290. Certain officers to make application.
2291. Appointment of guardian.
2292. Costs, by whom paid.
2293. When applicant to pay costs.
2294. New trial may be granted.
2295. Bond of guardian.
2296. Additional bond may be required.
2297. Custody of bond—Copy as evidence.
2298. Notice of guardian's appointment.
2299. Custody and support of ward.
2300. Guardian to take possession of effects.
2301. Inventory and its requisites.
2302. Additional inventories.
2303. Witnesses to inventory.
2304. Appraisement required.
2305. Allowance and payment of demands.
2306. General duties of guardian.
2307. Court may control ward's person and estate.
2308. Petition to sell or mortgage real estate.
SECTION.
2309. Requisites of petition.
2310. Order for sale.
2311. Terms of sale to be fixed by court.
2312. Notice of sale.
2313. Sale, and report.
2314. Verification of report.
2315. Execution of deed.
2316. Sale may be set aside—New sale.
2317. Mortgage and lease to be approved.
2318. Effect of conveyance, etc.
2319. Annual accounting required.
2320. Ward's contracts void.
2321. Ward exempt from certain process.
2322. Process to be served on guardian.
2323. Inquiry concerning restoration of ward.
2324. If ward restored, guardian to settle.
2325. Settlement on death of ward.
2326. Removal of guardian.
2327. Settlement by removed guardian.
2328. Guardian controlled by court.
2329. When ward to be confined.
2330. Confinement—Expenses.
2331. County may recover expenses.

Application for inquisition.

SEC. 2287. If information in writing be given to the probate judge, that any person in the county is an idiot, lunatic, or person of unsound mind, or an habitual drunkard, and incapable of managing, and praying that an inquiry thereunto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury. [C. L. 1876, ch. 79, § 1.]

Court may act in vacation.

SEC. 2288. Such information may also be given in the vacation of said court, to the judge thereof, in which event he shall call a special term of the court for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind, or an habitual drunkard or not. [C. L. 1876, ch. 79, § 2.]

Person may be brought into court.

SEC. 2289. In proceedings under this chapter, the probate court may, in its discretion, cause the person alleged to be of unsound mind, or an habitual drunkard, to be brought before the court. [C. L. 1876, ch. 79, § 3.]

Certain officers to make application.

SEC. 2290. Whenever any judge of the probate court, justice of the peace, sheriff, coroner, or constable, shall discover any person resident of his county, to be of unsound mind or an habitual drunkard, (as in the first section of this chapter mentioned), it shall be his duty to make application to the probate court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had, as in the case of information by unofficial persons. [C. L. 1876, ch. 79, § 4.]

Appointment of guardian.

SEC. 2291. If it be found by the jury that the subject of inquiry is of unsound mind, or an habitual drunkard, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such person. [C. L. 1876, ch. 79, § 5.]

Costs, by whom paid.

SEC. 2292. When any person shall be found to be insane, or an habitual drunkard, according to the preceding provisions, the cost of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county. [C. L. 1876, ch. 79, § 6.]

When applicant to pay costs.

SEC. 2293. If the person alleged to be insane or an habitual drunkard, shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had. [C. L. 1876, ch. 79, § 7.]

New trial may be granted.

SEC. 2294. The court may, if just cause appears at any time during the the term at which an inquisition is had, set the same aside and cause a new jury to be impaneled to inquire into the facts, but when two juries concur in any case, the verdict shall not be set aside. [C. L. 1876, ch. 79, § 8.]

Bond of guardians.

SEC. 2295. Every guardian of a person of unsound mind, or an habitual drunkard, before entering upon the duties assigned him, shall enter into bond to the Territory of Wyoming in such sum and with such security as the court shall approve, conditioned that he will take due and proper care of such insane person or habitual drunkard, and manage and administer his estate and effects to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things touching his guardianship, as may be prescribed by law, or enjoined on him by the order, sentence or decree of any court of competent jurisdiction. [C. L. 1876, ch. 79, § 9.]

Additional bond may be required.

SEC. 2296. The court may, at any time, require of any such guardian to give a new bond, or additional security, as the circumstances of the case shall require, and if any order for that purpose be not complied with, within a reasonable time, to be therein named, the appointment of the guardian may be revoked and another appointed, who shall give the bond and the security required. [C. L. 1876, ch. 79, § 10.]

Custody of bond—Copy as evidence.

SEC. 2297. Every bond given by such guardians shall be deposited with the judge of the probate court making the appointment, and a copy thereof duly certified by said judge, shall be evidence in all respects as the original. [C. L. 1876, ch. 79, § 11.]

Notice of guardian's appointment.

SEC. 2298. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published, at such time and in such manner as the probate court shall order. [C. L. 1876, ch. 79, § 12.]

Custody and support of ward.

SEC. 2299. Every such guardian shall take charge of the person committed to his charge, and provide for his support and maintenance as hereinafter directed. [C. L. 1876, ch. 79, § 13.]

Guardian to take possession of effects.

SEC. 2300. It shall be the duty of the guardian to collect and take into his possession, the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship. [C. L. 1876, ch. 79, § 14.]

Inventory and its requisites.

SEC. 2301. Within three months after his appointment, such guardian shall make out and file with the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such guardian. [C. L. 1876, ch. 79, § 15.]

Additional inventories.

SEC. 2302. Whenever any property belonging to such estate shall be discovered after filing any inventory, it shall be the duty of the guardian to file as aforesaid, an additional inventory, containing a just and true account of the same from time to time, as the same shall be discovered. [C. L. 1876, ch. 79, § 16.]

Witnesses to inventory.

SEC. 2303. All such inventories shall be made in the presence of, and attested by, two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian. [C. L. 1876, ch. 79, § 17.]

Appraisement required.

SEC. 2304. It shall be the duty of the judge of the probate court as soon as he appoints a guardian for an idiot, lunatic, person of unsound mind, or an habitual drunkard who may have any estate or property, or valuable thing demanding the care of such guardian, to appoint three appraisers to make appraisement and returns thereof of such estate, property, or other valuable thing, and such appraisers, and the pay thereof shall, in all respects when applicable, be governed by the law now in force relating to the appraisement of the estates of deceased persons. [S. L. 1886, ch. 69, § 3.]

Allowance and payment of demands.

SEC. 2305. In all cases of estates mentioned in the last preceding section, all demands against any such estate shall be presented for allowance in the same manner as is prescribed for the presentation of demands against the estate of deceased persons, and, in all respects, shall be governed in their classification, payment and limitations by the laws relating to the estate of deceased persons, as far as the same is applicable thereto. [S. L. 1886, ch. 69, § 4.]

General duties of guardian.

SEC. 2306. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of, or against his ward, to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor, and to adjust, settle, and pay all demands due, or becoming due from his ward, so far as his effects and estate will extend, as herein provided. [C. L. 1876, ch. 79, § 18.]

Court may control ward's person and estate.

SEC. 2307. Every probate court by whom any insane person or habitual drunkard is committed to guardianship, may make an order for the restraint, support and safe keeping of such person, for the management of his estate, for the support and maintenance of his family and education of his children, out of the proceeds of such estate; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for the purposes above specified. [C. L. 1876, ch. 79, § 19.]

Petition to sell or mortgage real estate.

SEC. 2308. Whenever the personal estate of any such insane person or habitual drunkard, shall be insufficient for the discharge of his debts, the maintenance of himself and his family, or the education of his children, it shall be the duty of the guardian to apply by petition to the court by which he was appointed, praying authority to mortgage, lease or sell the whole, or as much of the real estate of such person as shall be necessary to supply the deficiency. [C. L. 1876, ch. 79, § 20.]

Requisites of petition.

SEC. 2309. The petition shall set forth the particulars of the amount of the estate, real and personal, of such insane person or habitual drunkard, and of the debts by him owing, accompanied by a full, true and perfect account of the guardianship of the petitioner, showing the application of the funds which may have come to his hands. [C. L. 1876, ch. 79, § 21.]

Order for sale.

SEC. 2310. If it appears to the court upon examination of the matter, that the personal estate is insufficient for the purposes above mentioned, and that the property has been applied as far as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease or sale of the whole, or such part, of the estate as may be deemed necessary or proper. [C. L. 1876, ch. 79, § 22.]

Terms of sale to be fixed by court.

SEC. 2311. The court, making such order, shall direct the time and terms of sale, or if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which such proceeds shall be secured, and the income or produce thereof, be appropriated. [C. L. 1876, ch. 79, § 23.]

Notice of sale.

SEC. 2312. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place and terms of sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper in, or nearest to, the county in which the premises to be sold are situated, and shall also put up like notices at six of the most public places in such county, six weeks before the day of sale. [C. L. 1876, ch. 79, § 24.]

Sale and report.

SEC. 2313. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction to the highest bidder and make report of his proceedings to the court at the term next succeeding the sale. [C. L. 1876, ch. 79, § 25.]

Verification of report.

SEC. 2314. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not, directly or indirectly, become the purchaser of the property sold and that he was in nowise interested in the purchase thereof. [C. L. 1876, ch. 79, § 26.]

Execution of deed.

SEC. 2315. If the court approve the proceedings, the guardian shall execute a deed to the purchaser, reciting the order of sale and conveying to the purchaser all the estate, right, title and interest of such insane person to the estate sold. [C. L. 1876, ch. 79, § 27.]

Sale may be set aside—New sale.

SEC. 2316. If the report be disapproved, the court may set aside the sale and order all money paid to be refunded and all securities given to be canceled and may renew the order of sale as often as may be necessary until the proceedings are approved. [C. L. 1876, ch. 79, § 28.]

Mortgage and lease to be approved.

SEC. 2317. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose, until the court shall have approved the agreement made by the guardian under such order. [C. L. 1876, ch. 79, § 29.]

Effect of conveyance, etc.

SEC. 2318. Every conveyance, mortgage, lease and assurance, made under the order of a probate court pursuant to the provisions of this chapter, shall be as valid and effectual as if the same had been executed by such insane person or habitual drunkard, when of sound memory and understanding, or temperate. [C. L. 1876, ch. 79, § 30.]

Annual accounting required.

SEC. 2319. Every guardian appointed under this chapter, shall, once a year, or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court. [C. L. 1876, ch. 79, § 31.]

Ward's contracts void.

SEC. 2320. No contract of any person found to be of unsound mind, or an habitual drunkard, as hereinbefore specified, which shall be made without the consent of his guardian, shall be valid or binding, and such guardian may sue for the recovery of any money or property which may have been sold or disposed of by his ward, without his consent. [C. L. 1876, ch. 79, § 32.]

Ward exempt from certain process.

SEC. 2321. No such insane person or habitual drunkard shall be held to bail, nor shall his body be taken in execution on any civil action. [C. L. 1876, ch. 79, § 33.]

Process to be served on guardian.

SEC. 2322. In all actions against such insane person or habitual drunkard, the process shall be served on his guardian; and, on judgment against such person or his guardian as such, the execution shall be against his property only, and in no case against his body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto by false pleading or otherwise. [C. L. 1876, ch. 79, § 34.]

Inquiry concerning restoration of ward.

SEC. 2323. If any person shall allege in writing, verified by oath or affirmation, that any person declared to be of unsound mind, or an habitual drunkard, has been restored to his right mind, or to temperate habits; the court by which the proceedings were had, shall cause the facts to be inquired into by a jury. [C. L. 1876, ch. 79, § 35.]

If ward restored, guardian to settle.

SEC. 2324. If it shall be found that such person has been restored to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to him. [C. L. 1876, ch. 79, § 36.]

Settlement on death of ward.

SEC. 2325. In case of the death of any such insane person or habitual drunkard while under guardianship, the power of the guardian shall cease, and the estate descend and be distributed in the same manner as if such person had been of sound mind and temperate habits, and the guardian shall immediately settle his accounts and deliver the estate and effects of his ward to his personal representatives. [C. L. 1876, ch. 79, § 37.]

Removal of guardian.

SEC. 2326. The several probate courts shall have power to remove such guardians at any time for neglect of duty, or mismanagement, or disobedience to any lawful order, and appoint others. [C. L. 1876, ch. 79, § 38.]

Settlement by removed guardian.

SEC. 2327. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward. [C. L. 1876, ch. 79, § 39.]

Guardian controlled by court.

SEC. 2328. The probate court shall have full power to control the guardian of any such insane person or habitual drunkard, in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees in the same manner as a court of chancery. [C. L. 1876, ch. 79, § 40.]

When ward to be confined.

SEC. 2329. If any person, by lunacy or otherwise, shall be furiously mad or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court of the county, who shall make such order for the restraint, support and safe keeping of such person as the circumstances of the case shall require. [C. L. 1876, ch. 79, § 41.]

Confinement expenses.

SEC. 2330. If any person, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace may cause such insane person to be apprehended and may employ any person to confine him or her in some suitable place until the probate court shall make further order therein, as in the preceding section specified. The expenses attending such confinement shall be paid by the guardian out of his estate or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury. [C. L. 1876, ch. 79, §§ 42 and 43.]

County may recover expenses.

SEC. 2331. In all cases of appropriations out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same. [C. L. 1876, ch. 79, § 44.]

CHAPTER 8.

JUVENILE DELINQUENTS.

SECTION.
2332. Convicted juveniles to be sent to house of refuge.
2333. Disobedient juveniles to be confined.
2334. Approval of accounts by penitentiary commissioners — Superintendent's report.
SECTION.
2335. Costs and fees to be paid as in criminal cases.
2336. Penitentiary commissioners to contract for care of juveniles.

Convicted juveniles to be sent to house of refuge.

SEC. 2332. It shall be lawful for the judge of the probate court of any county in this territory to commit to the care, custody and guardianship of the house of refuge of any state, where provision has been or shall be made, any child or children, under the age of sixteen years, who may have been convicted in the district court of the county of which he is such judge of probate, of any offense, except homicide, arson or rape, to be educated, trained and treated in the same manner as the children who have been or may be committed to said house of refuge from the state to which they may be sent, and whenever, in the judgment of the manager of the said house of refuge, any child who has been committed from this territory shall have become sufficiently improved and reformed, the said manager shall have authority to place the said child as an apprentice to some useful trade or employment in any state in which the said managers are now or may be authorized to place the children committed to their care by the laws of the state to which they may be sent, or to return said child to its parents or guardian. [S. L. 1884, ch. 53, § 1.]

Disobedient juveniles to be confined.

SEC. 2333. It shall be lawful for the judge of probate in any county of this territory, on complaint made by the parent or parents or guardian of any child or children under sixteen years of age, that such child or children is or are disobedient and uncontrollable, to commit such child or children to the said house of refuge to be educated, trained and treated, and to be indentured or discharged in the same manner as is provided in the first section of this chapter. The managers of said house of refuge shall have as full power and authority over the children committed to their care by this chapter as are granted to and exercised by the said managers over the children committed to the said house of refuge by the courts of the state providing for the care, education, training and treating of said juvenile delinquents. [S. L. 1884, ch. 53, § 2.]

Approval of accounts by penitentiary commissioners—Superintendent's report.

SEC. 2334. The board of penitentiary commissioners shall once in three months approve the account for keeping and maintaining juvenile delinquents, and thereupon the auditor of the territory shall draw a warrant on the treasurer of the territory, payable to the order of the managers of said house of refuge, for the education, support and maintenance of any child or children who may have been committed from this territory under the provisions of this chapter for the preceding quarter; *Provided*, That the charges and costs of such education, support and maintenance shall not exceed the sum of four dollars per week for each child, and that the superintendent of said house of refuge shall furnish the governor with a list of the children sent from this territory remaining in the house of refuge, together with the names of those who have been placed out, and with whom or returned to their parents or guardians. [S. L. 1884, ch. 53, § 3.]

Costs and fees to be paid as in criminal cases.

SEC. 2335. The costs and fees, which may be charged by any sheriff, clerk or other officer in the execution of this chapter, not hereby provided for by law, shall be taxed and allowed by the judge of probate, or district court, and paid in the same manner as the costs in other criminal cases. [S. L. 1884, ch. 53, § 4.]

Penitentiary commissioners to contract for care of juveniles.

SEC. 2336. For the purpose of carrying out the intention of this chapter, the board of penitentiary commissioners of this territory is hereby authorized and empowered to determine from time to time where such juvenile delinquents shall be confined, and to make all contracts between the territory and the legally authorized authorities of any house of refuge or correction for the safe keeping, care and custody of juvenile delinquents from this territory; *Provided*, That the house of refuge or correction so selected shall be the one to which such delinquents can be transported to and in which they can be confined and maintained at the least expense to the territory. [S. L. 1884, ch. 53, § 5.]

TITLE 38. PROCEDURE-CIVIL.

DIVISION 1. GENERAL AND PRELIMINARY PROVISIONS.
DIVISION 2. COMMENCEMENT OF ACTIONS--JURISDICTION—ISSUE.
DIVISION 3. TRIAL.
DIVISION 4. JUDGMENT.
DIVISION 5. ENFORCEMENT OF JUDGMENT.
DIVISION 6. PROVISIONAL REMEDIES.
DIVISION 7. SPECIAL PROCEEDINGS.
DIVISION 8. PROVISIONS AS TO THE OPERATION OF THIS TITLE.

DIVISION 1. GENERAL AND PRELIMINARY PROVISIONS.

CHAPTER 1. PROVISIONS PRELIMINARY AND MISCELLANEOUS.
CHAPTER 2. SPECIFIC DUTIES OF CERTAIN OFFICERS.

CHAPTER 1.

PROVISIONS PRELIMINARY AND MISCELLANEOUS.

SECTION.
2337. Interpretation of words.
2338. Construction of this title.
2339. Power of deputies.
2340. Form of oath.
2341. Time, computation of.
2342. Justification of sureties.

SECTION.
2343. Qualification of sureties.
2344. Process, style and attestation of.
2345. When publication may be made in another county.
2346. When special provisions shall govern.

Interpretation of words.

SEC. 2337. In the interpretation of this title, unless the context shows that another sense was intended, the word "person" includes a corporation; "writing" includes printing; "oath" includes affirmation; "insane" and "lunatic" include every species of mental deficiency or derangement; "bond" includes an undertaking; "and" may be read "or" and "or" read "and," if the sense requires it; words in the present include a future tense, and in the masculine gender include the feminine and neuter genders; and words in the plural include the singular, and in the singular include the plural number; but this enumeration shall not be construed to require a strict construction of other general words in this title. [S. L. 1886, ch. 60, § 1. R. S. O., § 4947.]

Construction of this title.

SEC. 2338. The provisions of this title and all proceedings under it, shall be liberally construed, in order to promote its object, and assist the parties in obtaining justice; and the rule of the common law, that statutes in derogation thereof must be strictly construed, has no application to this title; but this section shall not be so construed as to require a liberal construction of provisions affecting personal liberty, relating to amercement, or of a penal nature. [S. L. 1886, ch. 60, § 2. R. S. O., § 4948.]

Power of deputies.

SEC. 2339. A duty enjoined by statute upon a ministerial officer, and an act permitted to be done by him, may be performed by his lawful deputy. [S. L. 1886, ch. 60, § 3. R. S. O., § 4949.]

From of oath.

SEC. 2340. A person may be sworn in any form he deems binding on s conscience. [S. L. 1886, ch. 60, § 4. R. S. O., § 4950.]

Time, computation of.

SEC. 2341. Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday, it shall be excluded. [S. L. 1886, ch. 60, § 5. R. S. O., § 4951.]

Justification of sureties.

SEC. 2342. A court or an officer, authorized by law to approve a surety, may require such person to testify orally or in writing touching his sufficiency; but this shall not, in itself, exonerate the officer in an action for taking insufficient surety. [S. L. 1886, ch. 60, § 6. R. S. O., § 4952.]

Qualification of sureties.

SEC. 2343. Sureties must be residents of this territory and worth in the aggregate, double the sum to be secured, beyond the amount of their debts and have property liable to execution in this territory equal to the sum to be secured. [S. L. 1886, ch. 60, § 7. R. S. O., § 4953.]

Process, style and attestation of.

SEC. 2344. Process shall be under the seal of the court from which it issues, be styled "The Territory of Wyoming, ———— County," be signed by the clerk, and bear date the day it is actually issued. [S. L. 1886, ch. 60, § 8. R. S. O., § 4954.]

When publication may be made in another county.

SEC. 2345. When it is provided by statute that a notice shall be published in a newspaper and no such paper is published in the county or other place mentioned, or if such paper is published there and the publisher refuse, on tender of his usual charge for a similar notice, to insert the same in his newspaper, then a publication in a newspaper of general circulation in the county or other place mentioned shall be sufficient. [S. L. 1886, ch. 60, § 9. R. S. O., § 4955.]

When special provisions shall govern.

SEC. 2346. Where in this title special provision is made as to service, pleadings, competency of witnesses or in any other respect inconsistent with the general provisions in this title, the special provisions shall govern, unless it appear that the provisions are cumulative. [S. L. 1886, ch. 60, § 10. R. S. O., § 4956.]

CHAPTER 2.

SPECIFIC DUTIES OF CERTAIN OFFICERS.

SECTION.
2347. Books to be kept by clerk.
2348. Entries on appearance docket and their effect.
2349. Precipe for writs and process.
2350. Clerk to file and preserve papers.
2351. Indorsement on papers.
2352. Clerk to keep books and make records.
2353. Record of orders out of court.
2354. Provisions applicable to all clerks.
SECTION.
2355. General duties of clerks.
2356. Sheriff to indorse on writ time of its receipt.
2357. When process directed to coroner or other person.
2358. Special appointments to serve process—Return.
2359. General duties of sheriff.

Books to be kept by clerk.

SEC. 2347. The clerk of the district court shall keep at least five books, to be called the appearance docket, trial docket, journal, record and execution docket. [S. L. 1886, ch. 60, § 11. R. S. O., § 4957.]

Entries on appearance docket, and their effect.

SEC. 2348. The clerk shall enter on the appearance docket, at the time of the commencement of an action or proceeding, the names of the parties in full, with names of counsel, and forthwith index the case, direct and reverse, in the name of each plaintiff and defendant. He shall also enter at the time it occurs, under the case so docketed, the issue of the summons or other mesne process or order, and the filing of each paper, and he shall record in full the return on such writ or order, with the date of its return to the court, which entry shall be evidence of such service. [S. L. 1886, ch. 60, §. 12. R. S. O., § 4958.]

Precipe for writs and process.

SEC. 2349. All writs and orders for provisional remedies and process of every kind shall be issued by the clerks of the several courts; but before they are issued a precipe shall be filed with the clerk demanding the same. [S. L. 1886, ch. 60, § 13. R. S. O., § 4959.]

Clerk to file and preserve papers.

SEC. 2350. The clerk shall file together, and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding. [S. L. 1886, ch. 60, § 14. R. S. O., § 4960.]

Indorsement on papers.

SEC. 2351. The clerk shall indorse upon every paper filed with him the date of the filing thereof, and upon every order for a provisional remedy, and upon every undertaking given under the same, the date of its return to his office. [S. L. 1886, ch. 60, § 15. R. S. O., § 4961.]

Clerk to keep books and make records.

SEC. 2352. The clerk shall keep the journals, records, books and papers appertaining to the court, and record its proceedings. [S. L. 1886, ch. 60, § 16. R. S. O., § 4962.]

Record of orders out of court.

SEC. 2353. Orders made out of court shall be forthwith entered by him in the journal of the court, in the same manner as orders made in term. [S. L. 1886, ch. 60, § 17. R. S. O., § 4963.]

Provisions applicable to all clerks.

SEC. 2354. The provisions prescribing the duties of clerks of the district court shall, so far as they are applicable, apply to the clerks of other courts of record. [S. L. 1886, ch. 60, § 18. R. S. O., § 4964.]

General duties of clerk.

SEC. 2355. The clerk of each of the courts shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court. [S. L. 1886, ch. 60, § 19. R. S. O., § 4965.]

Sheriff to indorse on writ time of its receipt.

SEC. 2356. The sheriff shall indorse upon every writ or order, the day and hour it was received by him. [S. L. 1886, ch. 60, § 20. R. S. O., § 4966.]

When process directed to coroner, or other person.

SEC. 2357. Process in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner; and if both these officers are interested, the process shall be directed to, and executed by a person appointed by the court or judge. [S. L. 1886, ch. 60, § 21. R. S. O., § 4967.]

Special appointments to serve process—Return.

SEC. 2358. The court or judge may, for good cause, appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has; the person may be appointed on the motion of the party who obtains the process or order, and the return must be verified by affidavit; and he shall be entitled to the fees allowed to the sheriff for similar services. [S. L. 1886, ch. 60, § 22. R. S. O., § 4968.]

For special appointment of person to serve process, see also § 2123.

General duties of sheriff.

SEC. 2359. The sheriff shall execute every summons, order, or other process, return the same as required by law, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law. [S. L. 1886, ch. 60, § 23. R. S. O., § 4970.]

DIVISION 2. COMMENCEMENT OF ACTIONS—JURISDICTION—ISSUE.

CHAPTER 1. FORM OF ACTION.
CHAPTER 2. TIME OF COMMENCING ACTIONS.
CHAPTER 3. PARTIES TO ACTIONS.
CHAPTER 4. JOINDER OF ACTIONS.
CHAPTER 5. WHERE ACTIONS TO BE BROUGHT.
CHAPTER 6. JURISDICTION BY SUMMONS, PUBLICATION OR APPEARANCE.
CHAPTER 7. PLEADINGS.

CHAPTER 1.

FORM OF ACTION.

SECTION.
2360. But one form of action.
2361. Parties, how designated.
2362. Feigned issues abolished—Substitute therefor.

But one form of action.

SEC. 2360. The distinction between actions at law and suits in equity, and the forms of all such actions and suits heretofore existing are abolished, and in their place there shall be hereafter but one form of action, which shall be called a civil action. [S. L. 1886, ch. 60, § 24. R. S. O., § 4971.]

Parties, how designated.

SEC. 2361. In such action the party complaining shall be known as the plaintiff and the adverse party as the defendant. [S. L. 1886, ch. 60, § 25. R. S. O., § 4972.]

Feigned issues abolished—Substitute therefor.

SEC. 2362. There can be no feigned issue, but a question of fact, not put in issue by the pleadings, may be tried by a jury upon an order for the trial stating the question of fact to be tried; and such order shall be the only authority necessary for a trial, or such question may be referred in the same way to one or more persons. [S. L. 1886, ch. 60, § 26. R. S. O., § 4973.]

CHAPTER 2.

TIME OF COMMENCING ACTIONS.

SUB-DIVISION 1. ACTIONS IN GENERAL—ABATEMENT.
SUB-DIVISION 2. ACTIONS CONCERNING REAL PROPERTY.
SUB-DIVISION 3. OTHER ACTIONS.
SUB-DIVISION 4. GENERAL PROVISIONS.

SUB-DIVISION 1. ACTIONS IN GENERAL—ABATEMENT.

SECTION.
2363. Application of this chapter.
2364. Causes of action that survive.
2364a Actions for death which survive.
2364b Action to be in name of representatives—Limitations.
2365. Special limitations saved.

Application of this chapter.

SEC. 2363. This chapter shall not apply to actions already commenced, nor to cases wherein the right of action has already accrued; but the statutes in force when the action accrued shall be applicable to such cases, according to the subject of the action and without regard to the form, nor shall this chapter apply in the case of a continuing and subsisting trust, nor to an action by a vendee of real property in possession thereof, to obtain a conveyance of it. [S. L. 1886, ch. 60, § 27.]

Causes of action that survive.

SEC. 2364. In addition to the causes of action which survive at common law, causes of action for mesne profits or for an injury to real or personal estate, or for any deceit or fraud, shall also survive; and the action may be brought notwithstanding the death of the person entitled or liable to the same. [S. L. 1886, ch. 60, § 28.]

Actions for death which survive.

SEC. 2364*a*. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action to recover damages in respect thereof; then, and in every such case, the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter, [C. L. 1876, ch. 39 § 1.]

Action to be in name of representatives—Limitations.

SEC. 2364*b*. Every such action shall be brought by, and in the name of, the personal representative of such deceased person; and the amount recovered in every such action shall be distributed to the parties and in the proportions provided by law, in relation to the distribution of personal estates left by persons dying intestate. In every such case, the jury shall give such damages as they shall deem fair and just, not exceeding five thousand dollars, and the amount so recovered shall not be subject to any debts or liabilities of the deceased; *Provided*, That every such action shall be commenced within two years after the death of such deceased person. [C. L. 1876, ch. 39, § 2.]

Special limitations saved.

SEC. 2365. Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action accrues; but where a different limitation is prescribed by statute, that shall govern. [S. L. 1886, ch. 60, § 29.]

SUB-DIVISION 2. ACTIONS CONCERNING REAL PROPERTY.

SECTION.
2366. Limited to ten years.
SECTION.
2367. Saving to persons under disability.

Limited to ten years.

SEC. 2366. An action for the recovery of the title or possession of lands, tenements or hereditaments can only be brought within ten years after the cause of such action accrues. [S. L. 1886, ch. 60, § 30.]

Saving to persons under disability.

SEC. 2367. Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within ten years after the disability is removed. [S. L. 1886, ch. 60, § 31.]

SUB-DIVISION 3. OTHER ACTIONS.

SECTION.
2368. How limited.
2369. Specialties—Contracts in writing—Foreign claims.
2370. Contracts not in writing—Statutory liabilities.
SECTION.
2371. Trespass—Replevin—Fraud, etc.
2372. Libel—Slander, etc.—Statutory penalties.
2373. Official bonds and statutory undertakings.
2374. Actions not otherwise limited.
2375. Saving to persons under disability.

How limited.

SEC. 2368. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action accrues. [S. L. 1886, ch. 60, § 32.]

Specialties—Contracts in writing—Foreign claims.

SEC. 2369. Within five years an action upon a specialty or any agreement, contract or promise in writing, and on all foreign claims, judgments or contracts, expressed or implied, contracted or incurred before the debtor becomes a resident of this territory, action shall be commenced within two years after the debtor shall have established his residence in this territory. [S. L. 1886, ch. 60, § 33.]

Contracts not in writing--Statutory liabilities.

SEC. 2370. Within four years an action upon a contract not in writing, either express or implied; an action upon a liability created by statute, other than a forfeiture or penalty. [S. L. 1886, ch. 60, § 34.]

Trespass, replevin, fraud, etc.

SEC. 2371. Within four years an action for trespass upon real property, an action for the recovery of personal property, or for taking, detaining or injuring the same, but in an action for the wrongful taking of personal property the cause of action shall not be deemed to have accrued until the wrong doer is discovered; an action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud; but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud. [S. L. 1886, ch. 60, § 35.]

Libel, slander, etc.—Statutory penalties.

SEC. 2372. Within one year, an action for libel, slander, assault, battery, malicious prosecution or false imprisonment; an action upon a statute for a penalty or forfeiture; but where a different limitation is prescribed in the statute, by which the remedy is given, the action shall be brought within the period so limited. [S. L. 1886, ch . 60, § 36.]

Official bonds and stautory undertakings.

SEC. 2373. An action upon the official bond or undertaking of an officer, assignee, trustee, executor, administrator or guardian, or upon a bond or undertaking given in pursuance of a statute can only be brought within ten years after the cause of action accrues; but this section shall be subject to the qualification in section twenty-three hundred and sixty-five. [S. L. 1886, ch. 60, § 37.]

Actions not otherwise limited.

SEC. 2374. An action for relief, not hereinbefore provided for, can only be brought within ten years after the cause of action accrues. [S. L. 1886, ch. 60, § 38.]

Saving to persons under disability.

SEC. 2375. If a person, entitled to bring any action mentioned in this sub-division, except for a penalty or forfeiture, is, at the time the cause of action accrues, within the age of twenty-one years, insane, or imprisoned, such person may bring such action within the respective times limited by this chapter after such disability is removed. [S. L. 1886, ch. 60, § 39.]

SUB-DIVISION 4. GENERAL PROVISIONS.

SECTION.
2376. When action deemed commenced.
2377. Attempt equivalent to commencement.
2378. Saving when debtor out of territory or concealed.

SECTION.
2379. If barred at place of contract, barred here.
2380. Saving in case of reversal, etc.
2381. Partial payment—New promise in writing.

When action deemed commenced.

SEC. 2376. An action shall be deemed commenced, within the meaning of this chapter, as to each defendant, at the date of the summons which is served on him, or on a co-defendant who is a joint contractor, or otherwise united in interest with him; and when service by publication is proper, the action shall be deemed commenced at the date of the first publication, if the publication be regularly made. [S. L. 1886, ch. 60, § 40. R. S. O., § 4987.]

Attempt equivalent to commencement

SEC. 2377. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the party diligently endeavors to procure a service; but such attempt must be followed by service within sixty days. [S. L. 1886, ch. 60, § 41. R. S. O., § 4988.]

Saving when debtor out of territory or concealed.

SEC. 2378. If when a cause of action accrues against a person he is out of the territory, or has absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the territory, or while he is so absconded or concealed; and if, after the cause of action accrues he depart from the territory or abscond or conceal himself, the time of his absence or concealment shall not be computed as a part of the period within which the action must be brought. [S. L. 1886, ch. 60, § 42. R. S. O., § 4989.]

If barred at place of contract, barred here.

SEC. 2379. If, by the laws of the state or country where the cause of action arose the action is barred, it is also barred in this territory. [S. L. 1886, ch. 60, § 43. R. S. O., § 4990.]

Saving in case of reversal, etc.

SEC. 2380. If, in an action commenced in due time a judgment for the plaintiff be reversed, or the plaintiff fail otherwise than upon the merits and the time limited for the commencement of such action has, at the date of such reversal or failure expired, the plaintiff, or if he die and the cause of action survive, his representatives may commence a new action within one year after such date; and this provision shall apply to any claim asserted in any pleading by a defendant. [S. L.1886, ch. 60, § 44. R. S. O., § 4991.]

Partial payment—New promise in writing.

SEC. 2381. When payment has been made upon any demand founded on contract or a written acknowledgment thereof, or promise to pay the same has been made and signed by the party to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgement or promise. [S. L. 1886, ch. 60, § 45. R. S. O., § 4992.]

CHAPTER 3.

PARTIES TO ACTIONS.

SECTION.
2382. General rule as to plaintiff.
2383. Actions on bonds.
2384. Actions by executor, officer, etc.
2385. Married women as parties.
2386. Wife may defend.
2387. Insane persons and infants, actions by.
2388. Next friend liable for costs.
2389. Defense of insane persons.
2390. Guardian *ad litem*, duties and compensation.
2391. Determination of insanity.
2392. Defense of infant.
2393. Appointment of guardian.
2394. Joinder of plaintiffs.
2395. Joinder of defendants.
2396. Unwilling parties to be made defendants.
SECTION.
2397. When parties numerous, one may appear for all.
2398. Parties severally liable.
2399. Contraction of name, when permitted.
2400. Partnerships—Actions in firm name.
2401. Marriage of female—Death—Transfer of interest.
2402. Saving rights of parties not before court.
2403. Persons claiming interest may be made parties.
2404. Officers holding execution may be joined, when.
2405. Interpleader.
2406. Interpleader in favor of officer.
2407. Plaintiff in execution may be substituted for officer.

General rule as to plaintiff.

SEC. 2382. An action must be prosecuted in the name of the real party in interest, except as provided in the next two following sections; but when a party asks that he may recover by virtue of an assignment, the right of set-off, counter-claim and defense, as allowed by law, shall not be impaired. [S. L. 1886, ch. 60, § 46. R. S. O., 4993.]

Actions on bonds.

SEC. 2383. The rule prescribed in the preceding section may be so applied, when a person forfeits his bond or renders his sureties liable, that any person injured thereby, or who is by law entitled to the benefit of this security, may bring an action thereon, in his own name, against the person and his sureties, to recover the amount to which he is entitled by reason of the delinquency, which action may be prosecuted on a certified copy of the bond; and the custodian of the bond shall deliver such copy to any person claiming to be so injured on tender of the proper fee; but the provisions of this section as to the form of the action shall not be imperative, if provision is otherwise made by law; nor shall a judgment for one delinquency preclude the same or another party from an action on the same instrument for another delinquency. A county may sue in its corporate name upon any official bond of any of its officers. [S. L. 1886, ch, 60, § 47. R. S. O., 4994.]

Actions by executor, officer, etc.

SEC. 2384. An executor, administrator or guardian, a trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted; and officers may sue and be sued in such name as is authorized by law. [S. L. ch. 60, § 48. R. S. O., 4995.]

Married women as parties.

SEC. 2385. Hereafter in any civil action, suit or proceeding, whenever any married woman is a party, it shall not be necessary to join her husband with her as a party except in such cases where it would be necessary to join such husband without reference to the fact of his marriage to such woman. [S. L. 1886, ch. 60, § 49.]

Wife may defend.

SEC. 2386. When husband and wife are sued togther, the wife may defend for her own right; and if the husband neglect to defend she may also defend for his right. [S. L. 1886, ch. 60, § 50. R. S. O., 4997.]

Insane persons and infants, actions by.

SEC. 2387. The action of an insane person must be brought by his guardian; the action of an infant must be brought by his guardian or next friend; and when the action is brought by his next friend the court may dismiss it, if it is not for the benefit of the infant, or substitute the guardian, or any person, as the next friend. [S. L. 1886, ch. 60, § 51. R. S. O., § 4998.]

Next friend liable for costs.

SEC. 2388. The next friend shall be liable for the costs of the action brought by him, and when a next friend is insolvent, the court may, on motion, require security therefor. [S. L. 1886, ch. 60., § 52. R. S. O., § 4999.]

Defense of insane persons.

SEC. 2389. The defense of an insane person must be by his legally appointed guardian, or, if there is no guardian, or the guardian has an adverse interest, by a trustee for the suit, appointed by the court, and if the insanity of a party be discovered, or he become insane after the action is brought, it shall be thereafter prosecuted or defended by his guardian or his trustee, appointed as provided in this section. [S. L. 1886, ch. 60, § 53. R. S. O., § 5000.]

Guardian ad litem, duties and compensation.

SEC. 2390. The court shall require a guardian *ad litem*, or a trustee appointed under the preceding section, faithfully to discharge his duty, and upon his failure so to do may remove him, and appoint another in his stead; and the court may fix a compensation for his services, which shall be taxed in the costs against the minor or insane person. [S. L. 1886, ch. 60, § 54. R. S. O., § 5001.]

Determination of insanity.

SEC. 2391. When the insanity of a party is not manifest to the court, and the fact of insanity is disputed by a party or an attorney in the action, the court may try the question or empanel a jury to try the same. [S. L. 1886, ch. 60, § 55. R. S. O., § 5002.]

Defense of infant.

SEC. 2392. The defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted or by a judge thereof, or by a probate judge. [S. L. 1886, ch. 60, § 56. R. S. O., § 5003.]

Appointment of guardian.

SEC. 2393. The appointment may be made upon the application of the infant, if, being of the age of fourteen years, he apply within twenty days after the return of the summons or service by publication; and in case of his being under said age or of his neglect so to apply, the appointment may be made on the application of the plaintiff or a friend of the infant; but the appointment cannot be made until after a service of summons or publication. [S. L. 1886, ch. 60, § 57. R. S. O., § 5004.]

Joinder of plaintiffs.

SEC. 2394. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided. [S. L. 1886, ch. 60, § 58. R. S. O., § 5005.]

Joinder of defendants.

SEC. 2395. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff or who is a necessary party to a complete determination or settlement of a question involved therein. [S. L. 1886, ch. 60, § 59. R. S. O., § 5006.]

Unwilling parties to be made defendants.

SEC. 2396. Parties who are united in interest must be joined as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff cannot be obtained or if he is insane, and the consent of his guardian cannot be obtained, or if he has no guardian and that fact is stated in the petition, he may be made a defendant. [S. L. 1886, ch. 60, § 60. R. S. O., § 5007.]

When parties numerous, one may appear for all.

SEC. 2397. When the question is one of a common or general interest of many persons, or when the parties are very numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. [S. L. 1886, ch. 60, § 61. R. S. O., § 5008.]

Parties severally liable.

SEC. 2398. One or more of the persons severally liable on an instrument may be included in the same action thereon. [S. L. 1886, ch. 60, § 62. R. S. O., § 5009.]

Contraction of name when permitted.

SEC. 2399. Parties to a written instrument by inital letter, or a contraction of the name may be so designated in an action thereon. [S. L. 1886, ch. 60, § 63. R. S. O., § 5010.]

Partnerships—Actions in firm name.

SEC. 2400. A partnership formed for the purpose of carrying on trade or business in this territory or holding property therein, may sue or be sued by the usual or ordinary name which it has assumed, or by which it is known; and in such case it shall not be necessary to allege or prove the names of the individual members thereof. [S. L. 1886, ch. 60, § 64. R. S. O., § 5011.]

Marriage of female—Death—Transfer of interest.

SEC. 2401. Upon the marriage of a female who is a party the action shall not abate, but if it is necessary that the husband be joined therein he may be made a party with his wife; upon the disability of a party the court may allow the action to continue by or against his representative or successor in interest; and upon any other transfer of interest the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted for him. [S. L. 1886, ch. 60, § 65. R. S. O., § 5012.]

Saving rights of parties not before court.

SEC. 2402. The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court may order them to be brought in or dismiss the action without prejudice. [S. L. 1886, ch. 60, § 66. R. S. O., § 5013.]

Persons claiming interest may be made parties.

SEC. 2403. In an action for the recovery of real or personal property, a person claiming an interest in the property may, on his application, be made a party. [S. L. 1886, ch. 60, § 67. R. S. O., § 5014.]

Officer holding execution may be joined, when.

SEC. 2404. An officer holding an execution may be joined in an action to restrain the collection of the same in the county in which he resides, with the person for whose benefit the writ issued, when such person is a non-resident of the territory, or has left the same to avoid the service of a summons or order of injunction, or so conceals himself that process cannot be served upon him; and service may be made against such person by publication, as in other cases. [S. L. 1886, ch. 60, § 68. R. S. O., § 5015.]

Interpleader.

SEC. 2405. Upon affidavit of a defendant before answer, in an action upon contract, or for the recovery of personal property, that a third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same as the court or judge may direct, the court or judge may make an order for the safe keeping, or for the payment or deposit in court of the subject of the action, or the delivery thereof to such person as the court or judge may direct, and also an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant; and if such third party, having been served with a copy of the order, by the sheriff or such other person as the court or judge may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein; but if he appear he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit or delivery thereof. [S. L. 1886, ch. 60, § 69. R. S. O., § 5016.]

Interpleader in favor of officer.

SEC. 2406. An officer against whom an action is brought to recover personal property, taken by him on execution, or for the proceeds of such property sold by him, may, upon exhibiting to the court the process under which he acted, with his affidavit that the property was taken or sold by him under such process, have the benefit of the provisions of the preceding section, against the party in whose favor the execution issued. [S. L. 1886, ch. 60, § 70. R. S. O., § 5017.]

Plaintiff in execution may be substituted for officer.

SEC. 2407. In an action against an officer for the recovery of property taken under an execution, the court may, upon application of the defendant, and of the party in whose favor the execution issues, permit the latter to be substituted as the defendent, security for the costs having been given. [S. L. 1886, ch. 60, § 71. R. S. O., § 5018.]

CHAPTER 4.

JOINDER OF ACTIONS.

SECTION.
2408. Causes of action that may be joined.
2409. Must have same place of trial, etc.
SECTION.
2410. Actions for foreclosure and money judgment.

Causes of action that may be joined.

SEC. 2408. The plaintiff may unite several causes of action in the same petition, whether they are such as have heretofore been denominated legal or equitable or both, when they are included in either of the following classes:

First— The same transaction, or transactions, connected with the same subject of action;

Second— Contracts, express or implied;

Third—Injuries to person and property, or to either;

Fourth— Injuries to character;

Fifth— Claims to recover the possession of personal property, with or without damages, for the withholding thereof;

Sixth— Claims to recover real property, with or without damages, for the withholding thereof, the rents and profits of the same and the partition thereof;

Seventh— Claims against a trustee, by virtue of a contract or by operation of law. [S. L. 1886, ch. 60, § 72. R. S. O., § 5019.]

Must have same place of trial, etc.

SEC. 2409. The causes of action so united must not require different places of trial, and, except as otherwise provided, must affect all the parties to the action. [S. L. 1886, ch. 60, § 73. R. S. O., 5020.]

Action for foreclosure and money judgment.

SEC. 2410. In an action to foreclose a mortgage given to secure the payment of money, or to enforce a specific lien for money, the plaintiff may also ask in his petition a judgment for the money claimed to be due; and such proceedings shall be had and judgment rendered thereon as in a civil action for the recovery of money only. [S. L. 1886, ch. 60, § 74. R. S. O., § 5021.]

CHAPTER 5.

WHERE ACTIONS TO BE BROUGHT.

SECTION.
2411. When brought where property is situated.
2412. When property is situated in several counties.
2413. Specific performance.
2414. When brought where cause of action arose.
2415. Actions against domestic corporations.
2416. Against stage and railroad companies.
SECTION.
2417. Against turnpike companies.
2418. Special charter provisions.
2419. Non-residents and foreign corporations.
2420. General rule—Exceptions as to executors, etc.
2421. Change of venue when corporation is a party.

When brought where property is situated.

SEC. 2411. Actions for the following causes must be brought in the county in which the subject of the action is situate, except as provided in the next two sections:

First—For the recovery of real property, or of an estate or interest therein;

Second—For the partition of real property;

Third—For the sale of real property under a mortgage, lien or other incumbrance or charge. [S. L. 1886, ch. 60, § 75. R. S. O., § 5022.]

When property is situated in several counties.

SEC. 2412. When the property is situate in more than one county, the action may be brought in either; but in actions to recover real property, this can only be done when the property is an entire tract. [S. L. 1886, ch. 60, § 76. R. S. O., § 5023.]

Specific performance.

SEC. 2413. An action to compel the specific performance of a contract of sale of real estate may be brought in the county where the defendants, or any of them reside. [S. L. 1886, ch. 60, § 77. R. S. O., § 5024.]

When brought where cause of action arose.

SEC. 2414. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

First—For the recovery of a fine, forfeiture or penalty imposed by a statute, except that, when it is imposed for an offense committed on a river or other water course, or a road which is the boundary of the territory, or of two or more counties, the action may be brought in any county bordering on such river, water course or road, and opposite to the place where the offense was committed;

Second—Against a public officer, for an act done by him in virtue or under color of his office, or for a neglect of his official duty;

Third—On the official bond or undertaking of a public officer. [S. L. 1886, ch. 60, § 78. R. S. O., § 5025.]

Actions against domestic corporations.

SEC. 2415. An action other than one of those mentioned in the first four sections of this chapter, against a corporation created under the laws of this territory, may be brought in the county in which such corporation is situate, or has had its principal office or place of business; but if such corporation is an insurance company the action may be brought in the county wherein the cause of action, or some part thereof, arose. [S. L. 1886, ch. 60, § 79. R. S. O., § 5026.]

Against stage and railroad companies.

SEC. 2416. An action against the owner or lessee of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as carrier, and an action against a railroad company, may be be brought in any county through or into which such road or line passes. [S. L. 1886, ch. 60, § 80. R. S. O., § 5027.]

Against turnpike companies.

SEC. 2417. An action other than one of those mentioned in the first four sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies. [S. L. 1886, ch. 60, § 81. R. S. O., § 5028.]

Special charter provisions.

SEC. 2418. When the charter of a corporation created under the laws of this territory prescribes the place where a suit must be brought, that provision shall govern. [S. L. 1886, ch. 60, § 82. R. S. O., § 5029.]

Non-residents and foreign corporations.

SEC. 2419. An action other than one of those mentioned in the first four sections of this chapter against a non-resident of this territory, or a foreign corporation, may be brought in any county in which there is property of, or debts owing to the defendant, or where such defendant is found, but if the defendant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose. [S. L. 1886, ch. 60, § 83. R. S. O., § 5030.]

General rule, exceptions as to executors, etc.

SEC. 2420. Every other action must be brought in the county in which a defendant resides or may be summoned, except actions against an executor, administrator, guardian or trustee, which may be brought in the county wherein he was appointed or resides, in which case summons may issue to any county. [S. L. 1886, ch. 60, § 84. R. S. O., § 5031.]

Change of venue—When corporation is a party.

SEC. 2421. When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties. [S. L. 1886, ch. 60, § 85. R. S. O., § 5033.]

CHAPTER 6.

JURISDICTION BY SUMMONS, PUBLICATION, OR APPEARANCE.

SUB-DIVISION 1. ACTUAL SERVICE.
SUB-DIVISION 2. CONSTRUCTIVE SERVICE.

SUB-DIVISION 1. ACTUAL SERVICE.

SECTION.
2422. Commencement of civil action.
2423. Precipe for summons.
2424. Requisites of summons—To whom directed
2425. When summons issued to another county.
2426. When summons returnable.
2427. Alias writs.
2428. Who may serve summons—Special appointment.

SECTION.
2429. Service and return of summons.
2430. What equivalent to service.
2431. Service upon a corporation.
2432. Service on insurance companies.
2433. Service on foreign corporations.
2434. Service on infants.

Commencement of civil action.

SEC. 2422. A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon. [S. L. 1886, ch. 60, § 86. R. S. O., § 5035.]

Precipe for summons.

SEC. 2423. The plaintiff shall also file with the clerk of the court a precipe, stating therein the names of the parties to the action, and demanding that a summons issue. [S. L. 1886, ch. 60, § 87. R. S. O., § 5036.]

Requisites of summons—To whom directed.

SEC. 2424. The summons shall be issued by the clerk, shall be under the seal of the court from which it is issued, and shall be signed by the clerk. Its style shall be: "The Territory of Wyoming, ———— County," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, and command him to notify the defendant, or defendants, named therein that he or they have been sued, and must answer the petition filed by the plaintiff (giving his name) at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly, and when the action is for the recovery of money only, there shall be endorsed on the writ the amount to be specified in the precipe, for which, with interest, judgment will be taken if the defendant fail to answer. If defendant fail to appear judgment shall not be rendered for a larger amount and the costs; *Provided*, When any process issues from any of the territorial courts when exercising their jurisdiction as circuit and district courts of the United States, such process shall be directed to and executed by the United States marshal for the territory. [S. L. 1886, ch. 60, § 88. R. S. O., § 5037.]

When summons issued to another county.

SEC. 2425. When the action is rightly brought in any county, according to the provisions of chapter five of this division, a summons may be issued to any other county, against one or more of the defendants, at the plaintiff's request; but no maker or acceptor, or, if the bill is not accepted, no drawer of an instrument for the payment of money only, shall be held liable in an action thereon, except on warrant of attorney, in any county other than the one in which he, or one of the joint makers, or acceptors or drawers resides or is summoned. [S. L. 1886, ch 60, § 89. R. S. O., § 5038.]

When summons returnable.

SEC. 2426. When the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the second Monday after its date; but when it is issued to any other county, it may be made returnable at the option of the party having it issued, on the third or fourth Monday after its date; and the day of the month on which it is returnable shall be stated therein. [S. L. 1886, ch. 60, § 90. R. S. O., § 5039.]

Alias writs.

SEC. 2427. When a writ is returned "not summoned," or when the plaintiff deems the service defective, other writs may be issued, until the defendant is summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time. [S. L. 1886, ch. 60, § 91. R. S. O., § 5040.]

Who may serve summons—Special appointment.

SEC. 2428. The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ the time and manner of service, or it may be served by any person not a party to the action, appointed by such officer; but the authority of such person shall be indorsed on the writ; and when the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of the territory, the return shall be verified by oath; *Provided*, That in all cases where any writ, order, process of any kind, or notice, which is required by law to be served by any ministerial officer of the territory, and this distance to be traveled to make such service is over fifty miles, such officer shall appoint some suitable person, not a party in interest, upon the request of the party requesting such service, and the authority of such person so appointed shall be endorsed on such writ, order, process or notice by such officer, and directed to the person so appointed, by mail, at the risk of the party making such request. And when such writ, order, process or notice is served by a person so appointed, to whom it is directed, or when the service is made out of this territory, the return shall be verified by an oath or affidavit; *Provided further*, That no mileage shall be allowed for the distance intervening between the point where the writ, order, process or other notice was issued, and the postoffice where the same is sent to the person so authorized to serve the writ. [S. L. 1886, ch. 60, § 92. R. S. O., § 5041.]

For special appointment of person to serve process, see also § 2358.

Service and return of summons.

SEC. 2429. The service shall be by delivering, at any time before the return day, a copy of the summons, with the indorsement thereon, to the defendant personally, or by leaving a copy at his usual place of residence, with some member of his family or other person in his employ over the age of fourteen years, or if the defendant is a partnership sued by its company name, by leaving a copy at its usual place of doing business; and the return must be made at the time mentioned in the writ, and the time and manner of service shall be stated on the writ. [S. L. 1886, ch. 60, § 93. R. S. O., § 5042.]

What equivalent to service.

Sec. 2430. An acknowledgment on the back of the summons or petition by the party sued, or the voluntary appearance of a defendant is equivalent to service. [S. L. 1886, ch. 60, § 94. R. S. O., § 5043.]

Service upon a coporation.

Sec. 2431. A summons against a corporation may be served upon the president, mayor, chairman or president of the board of directors or trustees or other chief officer, or if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent, or if none of the aforesaid officers can be found, by a copy left at the office or usual place of business of such corporation with the person having charge thereof; and if such corporation is a railroad company, whether foreign or created under the laws of this territory and whether the charter thereof prescribes the manner and place, or either, of service or process thereon, the summons may be served upon any regular ticket or freight agent thereof, or if there is no such agent, then upon any conductor in any county in this territory in which such railroad is located or through which it passes. [S. L. 1886, ch. 60, § 95. R. S. O., § 5044.]

Service on insurance companies.

Sec. 2432. When the defendant is an insurance company and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. [S. L. 1886, ch. 60, § 96. R. S. O., § 5045.]

Service on foreign corporations.

Sec. 2433. When the defendant is a foreign corporation having a managing agent in this territory, the service may be upon such agent. [S. L. 1886, ch. 60, § 97. R. S. O., § 5046.]

Service on infants.

Sec. 2434. When the defendant is under the age of fourteen years, the service must be upon him and also upon his guardian or his father, or if neither his guardian nor his father can be found, then upon his mother or the person having the care of such infant or with whom he lives; if neither of these can be found or if the defendant is a minor over fourteen years of age, service upon the defendant alone shall be sufficient, and the manner of service may be the same as in the case of adults. [S. L. 1886, ch. 60, § 98. R. S. O., § 5047.]

SUB-DIVISION 2. CONSTRUCTIVE SERVICE.

SECTION.
2435. Service by publication, when may be made.
2436. Affidavit for service by publication.
2437. Publication, how made.
2438. When service complete—How proved.
2439. Personal service out of the territory.
SECTION.
2440. Service upon unknown heirs, etc.
2441. Procedure when defendants are not all served.
2442. *Lis pendens* in general.
2443. *Lis pendens*, when property is situated in other counties.

Service by publication, when may be made.

Sec. 2435. Service by publication may be had in either of the following cases:

First—In actions under the first three sections of the last preceding chapter, when the defendant resides out of the territory, or his residence cannot be ascertained;

Second—In actions to establish or set aside a will, where the defendant resides out of the territory or his residence cannot be ascertained;

Third- In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a non-resident of this territory, or the defendant's place of residence is unknown, and in actions against a corporation incorporated under the laws of this territory, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made, as provided by section twenty-four hundred and thirty-one, and which has no place of doing business in this territory;

Fourth—In actions which relate to, or the subject of which is real or personal property in this territory, when a defendant has or claims a lien thereon, or an actual or contingent interest therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the territory, or a foreign corporation, or his place of residence cannot be ascertained;

Fifth—In actions against executors, administrators, or guardians, when the defendant has given bond as such in this territory, but at the time of the commencement of the action is a non-resident of the territory, or his place of residence cannot be ascertained;

Sixth—In actions where the defendant, being a resident of this territory, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent;

Seventh—When a defendant in a petition in error has no attorney of record in this territory, and is a non-resident of and absent from the same, or has left the same to avoid the service of summons in error, or so conceals himself that such process cannot be served upon him;

Eighth—In an action or proceeding under chapter six, division four, of this title, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a non-resident of the territory;

Ninth—In suits for divorce, for alimony, to affirm or declare a marriage void, when the defendant is a non-resident of the territory or conceals himself or herself in order to avoid service of process. In any such case, when the residence of a defendant is known, it must be stated in the publication; immediately after the first publication the party making the service shall deliver to the clerk copies of the publication, with the proper postage, and the clerk shall mail a copy to each defendant, directed to his residence named therein, and make an entry thereof on the appearance docket; and in all other cases the party who makes the service, his agent or attorney, shall, before the hearing, make and file an affidavit that the residence of the defendant is unknown, and cannot with reasonable diligence be ascertained. [S. L. 1886, ch. 60, § 99. R. S. O., § 5048.]

Affidavit for service by publication.

SEC. 2436. Before service by publication can be made, an affidavit must be filed that service of a summons can not be made within this territory, on the defendant to be served by publication, and that the case is one of those mentioned in the preceding section; and when such affidavit is filed, the party may proceed to make service by publication. [S. L. 1886, ch. 60, § 100. R. S. O. § 5049.]

Publication, how made.

SEC. 2437. The publication must be made for six consecutive weeks in a newspaper published in the county where the petition is filed; or if there is no newspaper published in the county, then in a newspaper published in this territory, and of general circulation in such county; if it be made in a daily newspaper one insertion a week shall be sufficient; and it must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served when they are required to answer. [S. L. 1886, ch. 60, § 101. R. S. O., § 5050.]

When service complete—How proved.

SEC. 2438. Service by publication shall be deemed complete at the date of the last publication, when made in the manner and for the time prescribed in the preceding sections; and such service shall be proved by affidavit. [S. L. 1886, ch. 60, § 102. R. S. O., § 5051.]

Personal service out of the territory.

SEC. 2439. When service may be made by publication, personal service of a copy of the summons and petition may be made out of the territory. [S. L. 1886, ch. 60, § 103. R. S. O., § 5052.]

Service upon unknown heirs, etc.

SEC. 2440. When an heir or devisee of a deceased person is a necessary party, and it appears by affidavit that his name and residence are unknown to the plaintiff, proceedings against him may be had without naming him; and the court or judge shall make an order respecting the publication of notice, but the order shall require not less than six weeks publication. [S. L. 1886, ch. 60, § 104. R. S. O., § 5053.]

Procedure when defendants are not all served.

SEC. 2441. When service has been made on one or more defendants, but not on all, the plaintiff may proceed as follows:

First—If the action is against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise direct;

Second— If the action is against defendants severally liable, he may without prejudice to his rights against those not served, proceed against the defendants served. [S. L. 1886, ch. 60, § 105. R. S. O., § 5054.]

Lis pendens in general.

SEC. 2442. When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency; and while pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title. [S. L. 1886, ch. 60, § 106. R. S. O., § 5055.]

Lis pendens, when property is situated in other counties.

SEC. 2443. When any real property, the subject matter of an action, is situate in any county or counties other than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the register of deeds' office of such other county or counties before it shall operate therein as notice so as to charge third persons, as provided in the last preceding section; but it shall operate as such notice without record, in the county where it is rendered; but this section shall not apply to actions or proceedings under any statute which does not require such record. [S. L. 1886, ch. 60 § 107. R. S. O., § 5056.]

CHAPTER 7.

PLEADINGS.

SUB-DIVISION 1. PLEADING IN GENERAL.
SUB-DIVISION 2. PETITION.
SUB-DIVISION 3. DEMURRER.
SUB-DIVISION 4. ANSWER AND CROSS PETITION.
SUB-DIVISION 5. REPLY.
SUB-DIVISION 6. GENERAL RULES.
SUB-DIVISION 7. MISTAKES AND AMENDMENTS.
SUB-DIVISION 8. MOTIONS.

SUB-DIVISION 1. PLEADING IN GENERAL.

SECTION.
2444. Forms and rules determined by this chapter.
2445. Pleadings defined—Fictions abolished.
2446. Names of pleadings allowed.

Forms and rules determined by this chapter.

SEC. 2444. The forms of pleadings in civil actions in courts of record and the rules by which their sufficiency shall be determined are those prescribed in this chapter. [S. L. 1886, ch. 60, § 108. R. S. O., § 5057.]

Pleadings defined—Fictions abolished.

SEC. 2445. The pleadings are the written statements by the parties of the facts constituting their respective claims and defenses; all fictions therein are abolished and the title of a cause shall not be changed in any of its stages except when the defendant prosecutes error. [S. L. 1886, ch. 60, § 109. R. S. O., § 5058.]

Names of pleadings allowed.

SEC. 2446. The only pleadings allowed are:

First—Petition;

Second—Demurrer;

Third—Answer; which, when affirmative relief is demanded therein, may be styled cross-petition;

Fourth—Reply. [S. L. 1886, ch. 60, § 110. R. S. O., § 5059.]

SUB-DIVISION 2. PETITION.

SECTION.
2447. What petition must contain.

SECTION.
2448. Separate statement of causes of action.

What petition must contain.

SEC. 2447. The first pleading on the part of the plaintiff shall be the petition, which must contain:

First—The name of the court and the county in which the action is brought, and the names of the parties, followed by the word "petition;"

Second—A statement of the facts constituting the cause of action, in ordinary and concise language;

Third—A demand of the relief to which the party supposes himself entitled; if the recovery of mony is demanded, the amount shall be stated, and if interest is claimed, the time for which interest is to be computed shall also be stated. [S. L. 1886, ch. 60, § 111. R. S. O., § 5060.]

Separate statement of causes of action.

SEC. 2448. When the petition contains more than one cause of action they shall be separately stated and numbered. [S. L. 1886, ch. 60, § 112. R. S. O., § 5061.]

SUB-DIVISION 3. DEMURRER.

SECTION.
2449. Causes of demurrer to petition.
2450. Demurrer to specify grounds.
2451. Objection may be taken by answer—When waived.
2452. Misjoinder by actions—Procedure.
2453. Defendant may demur to part and answer to part.

SECTION.
2454 Demurrer to reply.
2455. Demurrer to answer.
2456. Causes of demurrer to counter-claim and set-off.

Causes of demurrer to petition.

SEC. 2449. The defendant may demur to the petition only when it appears on its face either:

First—That the court has no jurisdiction of the person of the defendant, or the subject of the action;

Second—That the plaintiff has not legal capacity to sue;

Third—That there is another action pending between the same parties for the same cause;

Fourth—That there is a misjoinder of parties plaintiff;

Fifth—That there is a defect of parties, plaintiff or defendant;

Sixth—That several causes of action are improperly joined;

Seventh—That separate causes of action against several defendants are improperly joined;

Eighth—That the petition does not state facts sufficient to constitute a cause of action. [S. L. 1886, ch. 60, § 113. R. S. O., § 5062.]

Demurrer to specify grounds.

SEC. 2450. The demurrer shall specify the grounds of objection to the petition; and unless it does so, it shall be regarded as objecting only that the petition does not state facts sufficient to constitute a cause of action, or that the court has not jurisdiction of the subject matter. [S. L. 1886, ch. 60, § 114. R. S. O., § 5063.]

Objection may be taken by answer when waived.

SEC. 2451. When any of the defects enumerated in section twenty-four hundred and forty-nine do not appear upon the face of the petition, the objection may be taken by answer, and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action. [S. L. 1886, ch. 60, § 115. R. S. O., § 5064.]

Misjoinder of actions- Procedure.

SEC. 2452. When a demurrer is sustained on the ground of misjoinder of several causes of action in a petition or answer, the court, on motion of the party who filed the pleading, shall allow him, with or without costs, in its discretion, to file several petitions, each including such of the causes of action as might have been joined; and an action shall be docketed for each of the petitions, and the same shall be proceeded in without further service. [S. L. 1886, ch. 60, § 116. R. S. O., § 5065.]

Defendant may demur to part and answer to part.

SEC. 2453. The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue. [S. L. 1886, ch. 60, § 117. R. S. O., § 5066.]

Demurrer to reply.

SEC. 2454. The defendant may also demur to the reply, or to a separate traverse or avoidance contained in the reply, of a defense, or counter-claim, on the ground that it is insufficient in law upon its face. [S. L. 1886, ch. 60, § 118. R. S. O., § 5067.]

Demurrer to answer.

SEC. 2455. The plaintiff may demur to a counter-claim, set-off or defense consisting of new matter contained in the answer, on the ground that it is insufficient in law, on its face. [S. L. 1886, ch. 60, § 119. R. S. O., § 5068.]

Causes of demurrer to counter claim and set-off.

SEC. 2456. The plaintiff may also demur to a counter-claim or set-off, upon which the defendant demands an affirmative judgment when it appears on its either:

First—That that the court has no jurisdiction of the subject thereof;

Second—That the defendant has not legal capacity to recover upon the same;

Third—That there is another action pending between the same parties for the same cause;

Fourth—That the counter-claim is not of the character specified in section twenty-four hundred and fifty-nine;

Fifth—That the counter-claim or set-off does not state facts sufficient to entitle the defendant to the relief demanded. [S. L. 1886, ch. 60, § 120. R. S. O., § 5069.]

SUB-DIVISION 4. ANSWER AND CROSS-PETITION.

SECTION.
2457. What answer shall contain.
2458. May contain several defenses, counter-claims, etc.
2459. Requisites of counter-claim.
2460. Costs in subsequent suits on couuter-claims, etc.
SECTION.
2461. New party to counter-claim.
2462. Requisites of set-off.
2463. New party to set-off.
2464. Compensation of cross demands.
2465. Answer of guardian and attorney.

What answer shall contain.

SEC. 2457. The answer shall contain:

First—A general or specific denial of each material allegation of the petition controverted by the defendant;

Second—A statement of any new matter constituting a defense, counter-claim or set-off, in ordinary and concise language. [S. L. 1886, ch. 60, § 121. R. S. O., § 5070.]

May contain several defenses, counter-claims, etc.

SEC. 2458. The defendant may set forth in his answer as many grounds of defense, counter-claim and set-off as he has, whether they are such as have been heretofore denominated legal or equitable, or both; he may claim therein relief touching the matters in question in the petition against the plaintiff, or against other defendants in the same action; and each must be separately stated and numbered, and they must refer in an intelligible manner to the causes of action which they are intended to answer. [S. L. 1886, ch. 60, § 122. R. S. O., § 5071.]

Requisites of counter-claim.

SEC. 2459. The counter-claim mentioned in the last preceding section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action. [S. L. 1886, ch. 60, § 123. R. S. O., § 5072.]

Costs in subsequent suits on counter-claims.

SEC. 2460. If a defendant omit to set up a counter-claim or set-off, he cannot recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in sections twenty-four hundred and sixty-one and twenty-four hundred and seventy-six. [S. L. 1886, ch. 60, § 124. R. S. O., § 5073.]

New party to counter-claim.

SEC. 2461. When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made by a summons to answer the counter-claim, or may direct the counter-claim to be stricken out of the answer and made the subject of a separate action. [S. L. 1886, ch. 60, § 125. R. S. O., § 5074.]

Requisites of set-off.

SEC. 2462. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of a court. [S. L. 1886, ch. 60, § 126. R. S. O., § 5075.]

New party to set-off.

SEC. 2463. If a new party be necessary to a final decision upon the set-off, the court shall permit the new party to be made, if, owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim unless permitted to use it as a set-off. [S. L. 1886, ch. 60, § 127. R. S. O., § 5076.]

Compensation of cross-demands.

SEC. 2464. When cross-demands have existed between persons, under such circumstances that if one had brought an action against the other a counter-claim or set-off could have been set up, neither can be deprived of the benefit thereof by assignment by the other, or by his death, but the two demands must be deemed compensated, so far as they equal each other. [S. L. 1886, ch. 60, § 128. R. S. O., § 5077.]

Answer of guardian and attorney.

SEC. 2465. The guardian of an infant, or of a person of unsound mind, or an attorney for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant. [S. L. 1886, ch. 60, § 129. R. S. O., § 5078.]

SUB-DIVISION 5. REPLY.

SECTION 2466. When necessary and what to contain.

Reply, when necessary, and what to contain.

SEC. 2456. When the answer contains new matter, the plaintiff may reply to such new matter denying generally or specifically each allegation controverted by him; and he may also allege, in ordinary and concise language any new matter not inconsistent with the petition, constituting an answer to such new matter in the answer. [S. L. 1886, ch. 60, § 130. R. S. O., § 5079.]

SUB-DIVISION 6. GENERAL RULES.

SECTION.
2467. Pleadings to answer asking relief.
2468. Allegations, what deemed true and what denied.
2469. Material allegations defined.
2470. Presumptions of law, etc., not to be pleaded
2471. Copies to be substituted for lost pleadings.
2472. When copies to be filed with pleadings.
2473. Abreviated pleadings on instruments for payment of money.
2474. What may be stricken from pleadings.
2475. Allegations may be made definite by amendment.
2476. Counter-claim and set-off may be made separate actions.
2477. Judgment, how pleaded and proven.
2478. Conditions precedent, how pleaded.
2479. Private statutes, how pleaded.
2480. Libel and slander.
2481. Answer and proof in such actions.
SECTION.
2482. Description of real property.
2483. Pleadings liberally construed.
2484. Time of filing pleadings.
2485. Time may be extended.
2486. Interrogatories.
2487. Answer to interrogatories.
2488. Enforcement of answers to interrogatories.
2489. Pleadings must be subscribed and verified.
2490. Verification, when not required.
2491. When one of several parties may verify.
2492. Affidavit, when sufficient.
2493. Affidavit of non-resident.
2494. Affidavit to be signed and certified.
2495. When verification not to apply to amount claimed.
2496. When affidavit may be made by agent or attorney.
2497. Effect of verification.

Pleadings to answer asking relief.

SEC. 2467. When in an answer affirmative relief is demanded against a co-defendant, such co-defendant may demur or answer thereto as if it were a petition, and to such answer of the co-defendant a demurrer or reply may be filed as in other cases. [S. L. 1886, ch. 60, § 131. R. S. O., § 5080.]

Allegations, what deemed true and what denied.

SEC. 2468. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in the reply shall be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require, and allegations of value or of amount of damage shall not be considered as true by failure to controvert them. [S. L. 1886, ch. 60, § 132. R. S. O., § 5081.]

Material allegations defined.

SEC. 2469. A material allegation in a pleading is one essential to the claim or defense which could not be stricken from the pleading without leaving it insufficient. [S. L. 1886, ch. 60, § 133. R. S. O., § 5082.]

Presumptions of law, etc., not to be pleaded.

SEC. 2470. Neither presumptions of law nor matters of which judicial notice is taken, need be stated in the pleading. [S. L. 1886, ch. 60, § 134. R. S. O., § 5083.]

Copies may be substituted for lost pleadings.

SEC. 2471. If an original pleading be lost or withheld by any person, the court may allow a copy thereof to be substituted. [S. L. 1886, ch. 60, § 135. R. S. O., § 5084.]

When copies to be filed with pleadings.

SEC. 2472. When the action, counter-claim or set-off is founded on an account or on a written instrument as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading, and if not so attached and filed, the reason for the omission must be stated in the pleading. [S. L. 1886, ch. 60, § 136. R. S. O., § 5085.]

Abbreviated pleadings on instruments for payment of money.

SEC. 2473. In an action, counter-claim, or set-off founded on an account or upon an instrument for the unconditional payment of money only, it shall be sufficient for a party to set forth a copy of the account or instrument with all credits and the indorsements thereon, and to state that there is due to him, on such account or instrument, from the adverse party, a specified sum, which he claims, with interest; and when others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties, it shall be necessary to state the facts which fix their liability. [S. L. 1886, ch. 60, § 137. R. S. O., § 5086.]

What may be stricken from pleadings.

SEC. 2474. If redundant, irrelevant, or scurrilous matter be inserted in a pleading, it may be stricken out on the motion of the party prejudiced thereby; and obscene words may be stricken from a pleading on the motion of a party, or by the court of its own motion. [S. L. 1886, ch. 60, § 138. R. S. O., § 5087.]

Allegations may be made definite by amendment.

SEC. 2475. When the allegations of a pleadings are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment. [S. L. 1886, ch. 60, § 139. R. S. O., § 5088.]

Counter-claim and set-off may be made separate actions.

SEC. 2476. The court, at any time before the final submission of the cause, may, on motion of the defendant, allow a counter-claim or set-off to be withdrawn, and the same may become the subject of another action; on motion or either party, to be made at the time such counter-claim or set-off is withdrawn; an action on the same shall be docketed and proceeded in without process, and the court shall direct the time and manner of pleading therein; and if an action be not so docketed, suit may be brought as in other cases. [S. L. 1886, ch. 60, § 140. R. S. O., § 5089.]

Judgment, how pleaded and proven.

SEC. 2477. In pleading a judgment, or other determination of a court, or of an officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made; and if such allegation be controverted, the party pleading must establish on the trial the facts conferring jurisdiction. [S. L. 1886, ch. 60, § 141. R. S. O., § 5090.]

Conditions precedent, how pleaded.

SEC. 2478. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance. [S. L. 1886, ch. 60, § 142. R. S. O., § 5091.]

Private statutes, how pleaded.

SEC. 2479. If pleading a private statute or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage. [S. L. 1886, ch. 60, § 143. R. S. O., § 5092.]

Libel for slander.

SEC. 2480. In an action for libel or slander, it shall be sufficient to state generally that the defamatory matter was published or spoken of the plaintiff; if the allegation be denied, the plaintiff must prove the facts, showing that the defamatory matter was published or spoken of him; and in such action it shall not be necessary to set out any obscene word, but it shall be sufficient to state its substance. [S. L. 1886, ch. 60, § 144. R. S. O. § 5093.]

Answer and proof in such action.

SEC. 2481. In the actions mentioned in the last preceding section, the defendant may allege and prove the truth of the matter charged as defamatory; and in every case he may prove any mitigating circumstances to reduce the amount of damages. [S. L. 1886, ch. 60, § 145. R. S. O., 5094.]

Description of real property.

SEC. 2482. In an action for the recovery of real estate the property shall be described with such certainty as will enable an officer holding an execution to identify it. [S. L. 1886, ch. 60, § 146. R. S. O., 5095.]

Pleadings liberally construed.

SEC. 2483. The allegations of a pleading shall be liberally construed, with a view to substantial justice between the parties. [S. L. 1886, ch. 60, § 147. R. S. O., § 5096.]

Time of filing pleadings.

SEC. 2484. The answer or demurrer by the defendant shall be filed on or before the third Saturday, and the reply or demurrer by the plaintiff on or before the fifth Saturday, after the return day of the summons, or service by publication; and the answer or demurrer of a defendant to a cross petition shall be filed on or before the third Saturday, and the reply or demurrer thereon on or before the fifth Saturday after the cross petition is filed. [S. L. 1886, ch. 60, § 148. R. S. O., § 5097.]

Time may be extended.

SEC. 2485. The court, or a judge thereof in vacation, may, for good cause shown, extend the time for filing any pleading upon such terms as are just. [S. L. 1886, ch. 60, § 149. R. S. O., § 5098.]

Interrogatories.

SEC. 2486. A party may annex to his pleading, other than a demurrer, interrogatories pertinent to the issue made in the pleading, which interrogatories, if not demurred to, shall be plainly and fully answered under oath by the party to whom they are propounded, or if such party is a corporation, by the president, secretary or other officer thereof, as the party propounding requires. [S. L. 1886, ch. 60, § 150. R. S. O., § 5099.]

Answer to interrogatories.

SEC. 2487. When annexed to the petition the interrogatories shall be answered within the time limited for answer to the petition; when annexed to the answer they shall be answered within the time limited for a reply; when annexed to the reply they shall be answered within the time allowed for an answer, but further time may be allowed in all cases by the court or a judge thereof in vacation. [S. L. 1886, ch. 60, § 151. R. S. O., § 5100.]

Enforcement of answers to interrogatories.

SEC. 2488. Answers to interrogatories may be enforced by non-suit, judgment by default or by attachment, as the justice of the case may require, and on the trial such answers, so far as they contain competent testimony on the issue or issues made, may be used by either party. [S. L. 1886, ch. 60, § 152. R. S. O., § 5101.]

Pleadings must be subscribed and verified.

SEC. 2489. Every pleading and motion must be subscribed by the party or his attorney, and every pleading of fact, except as provided in the next section, must be verified by the affidavit of the party, his agent or attorney; when a corporation is the party the verification may be made by an officer thereof, its agent or attorney, and when the territory, or an officer thereof in its behalf is the party, the verification may be made by any person acquainted with the facts, the attorney prosecuting or defending the action, the prosecuting attorney or the attorney general. [S. L. 1886, ch. 60, § 153. R. S. O., § 5102.[

Verification, when not required.

SEC. 2490. The verification mentioned in the preceding section shall not be required to the answer of a guardian, defending for an infant or a person of unsound mind, or the attorney of a person in prison, nor in any case where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution. [S. L. 1886, ch. 60, § 154. R. S. O., § 5103.]

When one of several parties may verify.

SEC. 2491. If several parties are united in interest and plead together, the affidavit may be made by one of them. [S. L. 1886, ch. 60, § 155. R. S. O., § 5104.].

Affidavit, when sufficient.

SEC. 2492. The affidavit shall be sufficient if it is stated therein that the affiant believes the facts stated in the pleading to be true. [S. L. 1886, ch. 60, § 156. R. S. O., § 5105.]

Affidavit of non-resident.

SEC. 2493. When the party pleading is a non-resident of the county in which the action is brought, or is absent from the county wherein the pleading is filed, an affidavit made before filing the pleading and filed with it, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. [S. L. 1886, ch. 60, § 157. R. S. O., § 5106.]

Affidavit to be signed and certified.

SEC. 2494. The affidavit verifying a pleading may be made before any person before whom a deposition might be taken, and must be signed by the party who makes it; the officer before whom the same was taken shall certify that it was sworn to before him and signed in his presence; and the certificate of the officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer. [S. L. 1886, ch. 60, § 158. R. S. O., § 5107.]

For officers authorized to take depositions, see §§ 2617, 2618 and 2619.

When verification not to apply to amount claimed.

SEC. 2495. The verification of the pleading does not apply to the amount claimed, except in actions founded on contract, express or implied, for the payment of money only. [S. L. 1886, ch. 60, § 159. R. S. O., § 5108.]

When affidavit may be made by agent or attorney.

SEC. 2496. The affidavit verifying a pleading can be made by the agent or attorney only:

First—When the facts are within the personal knowledge of the agent or attorney;

Second—When the plaintiff is an infant, or of unsound mind, or in prison;

Third—When the pleading to be verified is founded upon a written instrument for the payment of money, and such instrument is in the possession of the agent or attorney;

Fourth—When the party is not a resident of, or is absent from, the county. [S. L. 1886, ch. 60, § 160. R. S. O., § 5109.]

Effect of verification.

SEC. 2497. A pleading, verified as herein required, shall not be used against a party in any criminal prosecution, or action or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party. [S. L. 1886, ch. 60, § 161. R. S. O., § 5110.]

SUB-DIVISION 7. MISTAKES AND AMENDMENTS.

SECTION.
2498. When petition may be amended without leave.
2499. Amendment after demurrer filed.
2500. Pleading after demurrer is overruled.
2501. Amendments in furtherance of justice.
2502. Immaterial errors and defects disregarded.

SECTION.
2503. Amendment when demurrer is sustained.
2504. Further time for trial after amendment.
2505. Suing by fictitious name.
2506. Supplemental pleadings.
2507. Consolidation of actions.

When petition may be amended without leave.

SEC. 2498. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney; and the defendant shall have the same time to answer or demur thereto as to the original petition. [S. L. 1886, ch. 60, § 162. R. S. O., § 5111.]

Amendment after demurrer filed.

SEC. 2499. At any time within ten days after a demurrer is filed, the adverse party may amend, without leave, on payment of costs since filing the defective pleading; and notice of filing an amended pleading shall be forthwith served upon the other party, who shall have the same time thereafter to answer or reply thereto, as to an original pleading. [S. L. 1886, ch. 60, § 163. R. S. O., § 5112.]

Pleading after demurrer is overruled.

SEC. 2500. When a demurrer is overruled, the party who demurred may answer or reply, if the court is satisfied that he has a meritorious claim or defense, and did not demur for delay. [S. L. 1886, ch. 60, § 164. R. S. O., § 5113.]

Amendments in furtherance of justice.

SEC. 2501. The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved; and when an action or proceeding fails to conform to the provisions of this title, the court may permit the same to be made conformable thereto, by amendment. The party applying to amend during the trial shall be required to show that the amendatory facts were unknown to him prior to the application, unless in its discretion the court shall relieve him from so doing. [S. L. 1886, ch. 60, § 165. R. S. O., § 5114.]

Immaterial errors and defects disregarded.

SEC. 2502. The court in every stage of an action must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect. [S. L. 1886, ch. 60, § 166. R. S. O., § 5115.]

Amendment when demurrer is sustained.

SEC. 2503. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by amendment, with or without costs as the court in its discretion shall direct. [S. L. 1886, ch. 60, § 167. R. S. O., § 5116.]

Further time for trial after amendment.

SEC. 2504. When either party amends a pleading or proceeding, and the court is satisfied, by affidavit or otherwise, that the adverse party could not be ready for trial in consequence of the amendment, a continuance may be granted to some day in term, or to another term of court. [S. L. 1886, ch. 60, § 168. R. S. O., § 5117.]

Suing by a fictitious name.

SEC. 2505. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when the true name is discovered the pleading or proceeding may be amended accordingly; and the plaintiff in such case must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words, "real name unknown," and a copy thereof must be served personally upon the defendant. [S. L. 1886, ch. 60, § 169. R. S. O., § 5118.]

Supplemental pleadings.

SEC. 2506. Either party may be allowed, on such terms as to costs as the court, or judge thereof, may prescribe, to file a supplemental petition, answer, or reply, alleging facts material to the case which occurred subsequent to the filing of the former petition, answer or reply; but reasonable notice of the application must be given when the court or judge so requires. [S. L. 1886, ch. 60, § 170. R. S. O., § 5119.]

Consolidation of actions.

SEC. 2507. When two or more actions are pending in the same court the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated; and if it appears that at the time the motion is made the actions could have been joined, and if the court, or a judge thereof, find that they ought to be joined, the several actions shall be consolidated. [S. L. 1886, ch. 60, § 171. R. S. O., 5120.]

SUB-DIVISION 8. MOTIONS.

SECTION.
2508. Motion defined.
2509. Motion may contain several objects.
2510. Notice of motion, what to contain.

SECTION.
2511. Who may serve notices.
2512. Manner of service.
2513. When notice not required.

Motion defined.

SEC. 2508. A motion is an application for an order, addressed to a court or judge, by a party to a suit or proceeding, or one interested therein. [S. L. 1886, ch. 60, § 172. R. S. O., § 5121.]

Motion may contain several objects.

SEC. 2509. Several objects may be included in the same motion if they all grow out of or are connected with the action or proceeding in which it is made. [S. L. 1886, ch. 60, § 173. R. S. O., § 5122.]

Notice of motion, what to contain.

SEC. 2510. When notice of a motion is required, it must be in writing, and shall contain the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and, if affidavits are to be used on the hearing, that fact shall be stated; and the notice shall be served a reasonable time before the hearing. [S. L. 1886, ch. 60, § 174. R. S. O., § 5123.]

Who may serve notices.

SEC. 2511. Notices of motions may be served by a sheriff, coroner, constable, or by a disinterested person; and the return of an officer, or affidavit of such person, shall be proof of service. [S. L. 1886, ch. 60, § 175. R. S. O., § 5124.]

Manner of service.

SEC. 2512. The service of a notice shall be made as required for the services of a summons, and when served by an officer he shall be entitled to like fees, the service shall be on the party or his attorney of record, if either is a resident of the county in which the motion is made; and if there is more than one party adverse to such motion, service shall be made upon each party, or his attorney. [S. L. 1886, ch. 60, § 176. R. S. O., § 5125.]

When notice not required.

SEC. 2513. Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct. [S. L. 1886, ch. 60, § 177. R. S. O., § 5126.]

DIVISION 3. TRIAL.

CHAPTER 1. PRELIMINARY PROVISIONS.
CHAPTER 2. CONDUCT OF THE TRIAL.
CHAPTER 3. EVIDENCE.
CHAPTER 4. EXCEPTIONS.
CHAPTER 5. NEW TRIAL.

CHAPTER 1.

PRELIMINARY PROVISIONS.

SUB-DIVISION 1. THE ISSUE, HOW TRIED.
SUB-DIVISION 2. TIME OF TRIAL.
SUB-DIVISION 3. TENDER AND OFFER TO CONFESS JUDGMENT.
SUB-DIVISION 4. REVIVOR OF ACTIONS.

SUB-DIVISION 1. THE ISSUE, HOW TRIED.

SECTION.
2514. Trial defined.
2515. Issues defined and classified.
2516. When an issue of fact arises.
SECTION.
2517. How issues are tried.
2518. Certain issues of fact to be tried by court.

Trial defined.

SEC. 2514. A trial is a judicial examination of the issues, whether of law or of fact, in an action or proceeding. [S. L. 1886, ch. 60, § 178. R. S. O., § 5127.]

Issues defined and classified.

SEC. 2515. Issues arise on the pleadings where a fact, or conclusion of law, is maintained by one party and controverted by the other. They are of two kinds:

First—Of law;

Second—Of fact. [S. L. 1886, ch. 60, § 179. R. S. O., § 5128.]

When an issue of fact arises.

SEC. 2516. An issue of fact arises:

First—Upon a material allegation in the petition denied by the answer;

Second—Upon a set-off, counter-claim or new matter, presented in the answer and denied by the reply;

Third—Upon material new matter in the reply, which shall be considered as controverted by the opposite party without further pleading. [S. L. 1886, ch. 60, § 180. R. S. O., § 5129.]

How issues are tried.

SEC. 2517. Issues of law must be tried by the court, unless referred as hereinafter provided; and issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury unless a jury trial be waived, or a reference be ordered, as hereinafter provided. [S. L. 1886, ch. 60, § 181. R. S. O., 5130.]

As to how jury trial may be waived, see § 2567.

Certain issues of fact to be tried by court.

SEC. 2518. All other issues of facts shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred. [S. L. 1886, ch. 60, § 182. R. S. O., § 5131.]

SUB-DIVISION 2. TIME OF TRIAL.

SECTION.
2519. Trial docket.
2520. Judgment on default.
2521. Order in which cases shall be tried.

SECTION.
2522. Term at which actions are triable.
2523. Bar docket.

Trial docket.

SEC. 2519. The clerk shall make a trial docket at least twelve days before the first day of each term, and the cases shall be set for particular days, in the order in which they stand on the appearance docket; a case in all its stages in the same court, and upon every docket or book, and all papers filed or issued therein, shall bear the appearance docket number; but the clerk shall not place upon the trial docket any case in which nothing remains to be done except to execute an order for the sale of real or personal property, and to distribute the proceeds as directed by the order; and if it become necessary, the case may be re-docketed on the application of either party, whereupon it shall stand in all respects as if it had remained on the docket. [S. L. 1886, ch. 60, § 183. R. S. O., § 5132.]

Judgment on default.

SEC. 2520. In an action upon an account, or written instrument for the payment of money only, or in foreclosure, judgment may be entered at any time during the term, after the defendant is in default for an answer, but the court may, for good cause shown, give further time for answer. [S. L. 1886, ch. 60, § 184. R. S. O., § 5133.]

Order in which cases shall be tried.

SEC. 2521. Cases in which there is an issue of fact, or in which damages are to be assessed, shall be tried in the order in which they stand on the trial docket, unless, by the consent of the parties, or by the order of the court, they be continued or placed at the foot of the docket; all other cases shall be heard in the order in which they stand on the trial docket, unless the court otherwise direct; and the court may, at any time, hear a demurrer or a motion, and may, by rule, prescribe the time of hearing the demurrers and motions. [S. L. 1886, ch. 60, § 185. R. S. O., § 5134.]

Term at which actions are triable.

SEC. 2522. Actions are triable at the first term of the court after the issues therein, by the times fixed for pleading are or should have been made up; when the issues are or should have been made up during a term, such action shall be triable at that term; and when the issues are or should have been made up either before or during a term of court, but after the period for the preparation for the trial docket of the term, the clerk, if required by the court, shall place such actions on the trial docket of that term. [S. L. 1886, ch. 60, § 186. R. S. O., §, 5135.]

Bar docket.

Sec. 2523. The clerk shall make a copy of the trial docket for the use of the bar before the first day of the term. [S. L. 1886, ch. 60, § 187. R. S. O., § 5136.]

SUB-DIVISION 3. TENDER AND OFFER TO CONFESS JUDGMENT.

SECTION.
2524. Plea of tender of money before suit.
2525. Tender of performance before suit.
2526. Offer to confess judgment before action brought.
SECTION.
2527. Offer to confess out of court.
2528. Offer to confess in court.
2529. Offer to confess not to affect trial.
2530. Application of this sub-division.

Plea of tender of money before suit.

Sec. 2524. If, in an action on contract for the payment of money, the defendant answer and prove that he did tender payment of the money due on the contract, at any time before the commencement of the action thereon, and pay to the clerk, at any time before trial, the money so tendered, the plaintiff shall not have judgment for more than the money so tendered and due, without costs, and shall pay the defendant his costs. [S. L. 1886, ch. 60, § 188. R. S. O., § 5137.]

Tender of performance before suit.

Sec. 2525. If, in an action on a contract for the payment of any article or thing other than money, or for the performance of any work or labor, the defendant answer that he did tender payment or performance of such contract, at such time and place, and in such articles, work or labor, as by such contract he was bound to pay or perform, and the court or jury find that he did tender, as alleged in his pleading, they shall at the same time assess the value of the property or labor so tendered, and thereupon judgment shall be rendered in favor of the plaintiff for the sum so found, without interest or costs; but if the defendant forthwith perform his contract, or give to the plaintiff such assurance as the court may approve that he will perform the same within such time as the court may direct, judgment shall be rendered for the defendant; and in case any article so tendered is of a perishable nature it shall, from the time of such tender, be kept at the risk and expense of the plaintiff, provided the defendant take reasonable care of the same. [S. L. 1886, ch. 60, § 189. R. S. O., § 5138.]

Offer to confess judgment before action brought.

Sec. 2526. Before an action for recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action; whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court deems reasonable, fails to attend to accept the confession, or if he attend and refuse to accept it, and afterwards commence an action upon such cause and fail to recover more than the amount so offered to be confessed, and the interest thereon from the date of the offer, he shall pay all the costs of the action. [S. L. 1886, ch. 60, § 190. R. S. O., § 5139.]

Offer to confess out of court.

Sec. 2527. The defendant in an action for the recovery of money only, may, at any time before the trial serve upon the plaintiff, or his attorney, an offer in writing to allow judgment to be taken against him, for the sum specified therein; if the plaintiff accept the offer, and give notice thereof to the defendant, or his attorney, within five days after service of it, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; in either case the offer and acceptance shall be noted in the journal and judgment rendered accordingly; if the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn; and if the plaintiff fail to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer. [S. L. 1886, ch. 60, § 191. R. S. O., § 5140.]

Offer to confess in court.

SEC. 2528. The defendant in an action for the recovery of money may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action; whereupon if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court deems reasonable, fail to attend, and, on the trial, do not recover more than was so offered to be confessed, and the interest thereon from the date of the offer, such plaintiff shall pay all the costs of the defendant incurred after the offer was made. [S. L. 1886, ch. 60, § 192. R. S. O., § 5141.]

Offer to confess not affect trial.

SEC. 2529. An offer made, as provided in the three preceding sections, shall not be deemed an admission of the cause of action, nor of the amount to which the plaintiff is entitled; nor shall it be a cause of continuance of the action, or a postponement of the trial, or given in evidence or mentioned on the trial. [S. L. 1886, ch. 60, § 193. R. S. O., § 5142.]

Application of this sub-division.

SEC. 2530. The provisions of this sub-division shall be applied, so far as they may fairly be made applicable, to a tender or offer made by the plaintiff; and to the same extent, the same provisions may, in the discretion of the court, be applied to one or more of several causes of action, counter-claim or set-off in which case the court shall make such order as to costs as it deems proper. [S. L. 1886, ch. 60, § 194. R. S. O., § 5143.]

SUB-DIVISION 4. REVIVOR OF ACTIONS.

SECTION.
2531. Abatement of actions by death.
2532. When action may proceed without revivor.
2533. Court may determine rights of parties.
2534. Revivor in name of personal representatives.
2535. Revivor by appearance or supplemental pleading.
2536. Revivor by conditional order.
2537. Form of order.
2538. Service of order.
2539. Service of order by publication.
SECTION.
2540. In whose name revived when plaintiff dies.
2541. In whose name revived when defendant dies.
2542. When defendant in real action dies.
2543. Limitation when defendant dies.
2544. Limitation when plaintiff dies.
2545. Action dismissed when it cannot be revived.
2546. Defendant may have action dismissed for want of revivor.
2547. No postponement because of revivor.

Abatement of actions by death.

SEC. 2531. Except as otherwise provided, no action or proceeding pending in any court shall abate by the death of either or both of the parties thereto except an action for libel, slander, malicious prosecution, assault or assault and battery, for a nuisance or against a justice of the peace for misconduct in office, which shall abate by the death of either party. [S. L. 1886, ch. 60, § 195. R. S. O., § 5144.]

When action may proceed without revivor.

SEC. 2532. When there are several plaintiffs or defendants and one of them dies or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed, but the death of the party or the cessation of his powers shall be first stated on the record. [S. L. 1886, ch. 60, § 196. R. S. O., § 5146.]

Court may determine rights of parties.

SEC. 2533. When one of several plaintiffs or defendants dies or his powers as a personal representative cease, if the cause of action does not survive, the court, if of opinion that the merits of the controversy can be properly determined and the principles applicable to the case fully settled, may proceed to try the same as between the remaining parties, but the judgment shall not prejudice any person who was not a party at the time of the trial. [S. L. 1886, ch. 60, § 197. R. S. O., § 5147.]

Revivor in name of personal representatives.

SEC 2534. When one of the parties to an action dies or his powers as a personal representative cease before judgment, if the right of action survives in favor of or against his representatives or successor, the action may be revived and proceed in the name of such representatives or successor. [S. L. 1886, ch. 60, § 198. R. S. O., § 5148.]

Revivor by appearance or supplemental pleading.

SEC. 2535. A revivor may be effected by the allowance by the court or a judge thereof in vacation, of a motion of the representatives or successor in interest to become a party to the action or by supplemental pleading alleging the death of the party and naming his representatives or successor in interest upon whom service may be made, as in the commencement of an action, but the limitations contained in subsequent sections of this chapter do not apply to this section. [S. L. 1886, ch. 60, § 199. R. S. O., § 5149.]

Revivor by conditional order.

SEC. 2536. A revivor may also be effected by a conditional order of the court, if made in term, or by a judge thereof if in vacation, that the action be revived in the name of the representative or successor of the party who died or whose powers ceased, and proceed in favor of or against him. [S. L. 1886, ch. 60, § 200. R. S. O., § 5150.]

Form of order.

SEC. 2537. The order may be made on the motion of the adverse party, or of the representative or successor of the party who died, or whose powers ceased, suggesting his death, or the cessation of his powers, which with the name and capacities of his representative or successor shall be stated in the order. [S. L. 1886, ch. 60, § 201. R. S. O., § 5151.]

Service of order.

SEC. 2538. If the order be made by consent of the parties, the action shall forthwith stand revived; if not made by consent, the order shall be served upon the party adverse to the party on whose motion it was made, in the same manner, and returned within the same time, as a summons; and if sufficient cause be not shown against the revivor, the action shall stand revived. [S. L. 1886, ch. 60, § 202. R. S. O., § 5152.]

Service of order by publication.

SEC. 2539. When the plaintiff makes an affidavit that the representatives of the defendant, or any of them in whose name the action is ordered to be revived, are non-residents of the territory, or have left the territory to avoid a service of the order, or so conceal themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action is ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for six consecutive weeks, as provided by section twenty-four hundred and thirty-five, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived. [S. L. 1886, ch, 60, § 203. R. S. O., § 5153.]

In whose name revived when plaintiff dies.

SEC. 2540. Upon the death of the plaintiff the action may be revived in the names of his representatives to whom his right has passed; if his right has passed to his personal representative, the revivor shall be in his name; and if it has passed to his heirs or devisees who could support the action if brought anew, the revivor may be in their names. [S. L. 1886, ch. 60, § 204. R. S. O., § 5154.]

In whose name revived when defendant dies.

SEC. 2541. Upon the death of a defendant in an action, wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant or both, when the right of action, or any part thereof, survives against them. [S. L. 1886, ch. 60, § 205. R. S. O. § 5155.]

When defendant in real action dies.

SEC. 2542. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against its heirs or devisees, or both, and an order therefor may be forthwith made, in the manner directed in the preceding sections of this sub-division. [S. L. 1886, ch. 60, § 206. R. S. O., § 5156.]

Limitation when defendant dies.

SEC. 2543. An order to revive an action against the representative or successor of a defendant shall not be made without the consent of such representative or successor, unless within one year from the time it could have been first made. [C. L. 1886, ch. 60, § 207. R. S. O., § 5157.]

Limitation when plaintiff dies.

SEC. 2544. An order to revive an action in the name of the representatives or successor of a plaintiff may be made forthwith, but shall not be made of right, without the consent of the defendant, after the expiration of one year from the time the order might have first been made; but when the defendant is dead, or his powers have ceased, the order of revivor on both sides may be made in the period limited in the last section. [S. L. 1886, ch. 60, § 208. R. S. O., § 5158.]

Action dismissed when it cannot be revived.

SEC. 2545. When it appears by affidavit that the powers of a party who sues or is sued as a personal representative have ceased, or that either party to an action has been dead, for a period so long that the action cannot be revived in the names of his representatives or successors, without the consent of both parties, the court shall order the action to be stricken from the docket. [S. L. 1886, ch. 60, § 209. R. S. O., § 5159.]

Defendant may have action dismissed for want of revivor.

SEC. 2546. At any term succeeding the death of the plaintiff, while the action remains on the docket, the defendant, having given to the plaintiff's representatives in whose names the action might be revived ten days notice of the application, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action be forthwith revived. [S. L. 1886, ch. 60, § 210. R. S. O., § 5160.]

No postponement because of revivor.

SEC. 2547. When an action stands revived the trial thereof shall not be postponed by reason of the revivor. [S. L. 1886, ch. 60, § 211. R. S. O., § 5161.]

CHAPTER 2.

CONDUCT OF THE TRIAL.

SUB-DIVISION 1. TRIAL BY JURY, AND VERDICT.
SUB-DIVISION 2. TRIAL BY THE COURT.
SUB-DIVISION 3. TRIAL BY REFEREES.
SUB-DIVISION 4. TRIAL BY MASTER COMMISSIONERS.

SUB-DIVISION 1. TRIAL BY JURY, AND VERDICT.

SECTION.
2548. Law governing trials by jury.
2549. Challenges.
2550. Causes for challenge.
2551. Trial of challenge.
2552. Oath of jury—Their custody.
2553. Mode of conducting the trial.
2554. View of place or property by jury.
2555. Deliberation and custody of jury.
2556. Admonition to jurors when permitted to separate.
SECTION.
2557. Further instructions, if jury disagree.
2558. Discharge of jury before verdict,
2559. Re-trial of cause.
2560. Return of verdict.
2561. Further deliberation—Polling jury.
2562. Discharge of jury—Re-forming verdict.
2563. General and special verdicts.
2564. When jury may render general or special verdict.
2565. Special finding to control general verdict.
2566. Jury must assess amount of recovery.

Law governing trial by jury.

SEC. 2548. The general mode of summoning, impaneling, challenging and swearing the jury shall be as provided by law. [S. L. 1886, ch. 60, § 212.]

For manner of drawing, summoning and impanneling juries, see §§ 3376 to 3396 inclusive.

SEC. 2549. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made, unless the court otherwise order or direct. The challenge shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to three peremptory challenges. [C. L. 1876, ch. 70, § 25; ch. 71, § 1.]

Causes for challenge.

SEC. 2550. Challenges for cause may be taken on one or more of the following grounds:

First—A want of any of the qualifications prescribed by statute, to render a person competent as a juror;

Second—Consanguinity or affinity, within the third degree to either party;

Third—Standing in the relation of debtor or creditor, guardian or ward, master or servant, employer or clerk, or principal or agent to either party, or being a member of the family of either party, or a partner united in business with either party, or being security on any bond or obligation for either party;

Fourth—Having served as a juror or been a witness in a previous trial between the same parties, for the same cause of action, or being then a witness therein;

Fifth—Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of the juror, as a member or citizen of a municipal corporation;

Sixth—Having formed or expressed an unqualified opinion or belief as to the merits of the action, or the main question involved therein, provided that the reading of newspaper accounts of the subject matter before the court, shall not disqualify the juror either for bias or opinion;

Seventh—The existence of a state of mind in the juror evincing enmity against, or bias to either party. [C. L. 1876, ch. 70, § 26.]

Trial of challenge.

SEC. 2551. Challenges for cause shall be tried by the court. The juror challenged, and any other persons may be examined as witnesses on the trial of the challenge. [C. L. 1876, ch. 70, § 27.]

Oath of jury—Their custody.

SEC. 2552. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matter in issue between ————, the plaintiff, and

————————, the defendant, and a true verdict render, according to the evidence. After the oath or affirmation has been administered and the jury has been fully impaneled, it shall be the duty of the court to order the jury into the custody of the sheriff, or other officer selected by the court, and the jurors shall not be allowed to separate or depart from the custody of the sheriff, or other officer, until they have been duly discharged, unless by the consent of the parties to the action. It shall be the duty of the sheriff to prepare suitable and comfortable appartments, and prepare food for the jury pending the trial. [C. L. 1876, ch. 70, § 24.]

Mode of conducting the trial.

SEC. 2553. When the jury has been sworn the trial shall proceed in the following order, unless the court, for good cause and reasons, otherwise directs:

First—The party on whom rests the burden of the issues may briefly state his case, and the evidence by which he expects to sustain it;

Second—The adverse party may then briefly state his defense, and the evidence he expects to offer in support of it;

Third—The party on whom rests the burden of the issues must first produce his evidence; the adverse party will then produce his evidence;

Fourth—The parties will then be confined to rebutting evidence, unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case;

Fifth—When the evidence is concluded, and either party desires special instruction to be given to the jury, such instructions shall be reduced to writing, numbered and signed by the party or his attorney asking the same, and delivered to the court;

Sixth—And before the argument of the case is begun, the court shall give such instructions upon the law to the jury as may be necessary, which instructions shall be in writing, and be numbered and signed by the judge;

Seventh—When either party asks special instructions to be given to the jury, the court shall either give such instructions as requested, or positively refuse to do so; or give the instructions with modifications, and shall mark or indorse upon each instruction so offered in such manner that it shall distinctly appear what instructions were given in whole or in part, and in like manner those refused, so that either party may except to the instructions as given or refused or modified or to the modification. All instructions given by the court must be filed, together with those refused, as a part of the record. [S. L. 1886, ch. 60, § 213.]

View of place or property by jury.

SEC. 2554. The court, when of opinion it is proper for the jurors to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, may order them to be conducted in a body, under the charge of an officer, to the place which shall be shown to them by a person appointed by the court for that purpose; and while the jurors are thus absent no person other than the person so appointed shall speak to them on any subject connected with the trial. [S. L. 1886, ch. 60, § 214. R. S. O., § 5191.]

Deliberation and custody of jury.

SEC. 2555. When the case is submitted, the jury may decide in court, or retire for deliberation; if the jurors retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals; the officer having them under his charge shall not suffer any communication to be made to them, nor make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. [S. L. 1886, ch. 60, § 215. R. S. O., § 5192.]

Admonition to jurors when permitted to separate.

SEC. 2556. If the jurors be permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with nor suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the cause is finally submitted to them. [S. L. 1886, ch. 60, § 216. R. S. O., 5193.]

Further instructions, if jury disagree.

SEC. 2557. After the jurors have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the matter of law shall be given; and the court may give its recollection as to the testimony on the points in dispute, in the presence of, or after notice to, the parties or their counsel. [S. L. 1886, ch. 60, § 217. R. S. O., § 5194.]

Discharge of jury before verdict.

SEC. 2558. The jury may be discharged by the court on account of the sickness of a juror, or any accident or calamity requiring its discharge, or by consent of both parties, or after the jurors have been kept together until it satisfactorily appears that there is no probability of their agreeing. [S. L. 1886, ch. 60, § 218. R. S. O., § 5195.]

Re-trial of cause.

SEC. 2559. When the jury is discharged after the cause is submitted or during the trial, the cause may be tried again immediately or at a future time, as the court may direct. [S. L. 1886, ch. 60, § 219. R. S. O., § 5196.]

Return of verdict.

SEC. 2560. When the jurors agree upon their verdict it must be reduced to writing and signed by the foreman; they must then be conducted into court, their names called by the clerk and the verdict rendered by the foreman, and the clerk must read the verdict to the jury and make inquiry whether it is their verdict. [S. L. 1886, ch. 60, § 220. R. S. O., § 5197.]

Further deliberation—Polling jury.

SEC. 2561. If a jury disagree, or if, when the jury is polled, a juror answer in the negative, or if the verdict is defective in matter of substance, the jury must be sent out again for further deliberation, and either party may require the jury to be polled, which shall be done by the clerk or court asking each juror if it is his verdict. [S. L. 1886, ch. 60, § 221. R. S. O., § 5198.]

Discharge of jury—Reforming verdict.

SEC. 2562. If no disagreement be expressed and neither party require the jury to be polled, or on the polling each juror answer in the affirmative, the verdict is complete and the jury shall be discharged from the case; and if the verdict be defective in form only, it may, with the assent of the jurors, before they are discharged, be corrected by the court. [S. L. 1886, ch. 60, § 222. R. S. O., § 5199.]

General and special verdicts.

SEC. 2563. The verdict of a jury must be either general or special; a general verdict is that by which the jury finds generally upon all or any of the issues in favor of either the plaintiff or defendant; a special verdict is that by which the jury finds the facts only, and it must present the facts as established by the evidence, and not the evidence to prove the facts; and the facts must be so presented that nothing shall remain to the court but to draw from them conclusions of law. [S. L. 1886, ch. 60, § 223. R. S. O., § 5200.]

When jury may render general or special verdict.

SEC. 2564. In actions for the recovery of money only, or specific real property, the jury may render either a general or a special verdict; in all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; in all cases the court may instruct the jurors, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon; and the verdict or finding must be filed with the clerk and entered on the journal. [S. L. 1886, ch. 60, § 224. R. S. O., § 5201.]

Special finding to control general verdict.

SEC. 2565. When the special finding of facts is inconsistent with the general verdict, the former shall control the latter, and the court may give judgment accordingly. [S. L. 1886, ch. 60, § 225. R. S. O., § 5202.]

Jury must assess amount of recovery.

SEC. 2566. When, by the verdict, either party is entitled to recover money of the adverse party, the jury, in its verdict, must assess the amount of recovery. [C. L. 1886, ch. 60, § 226. R. S. O., 5203.]

SUB-DIVISION 2. TRIAL BY THE COURT.

SECTION.
2567. Trial by jury, how waived—Deposit of jury fee.
2568. General and special findings by court.
2569. Jury provisions to apply to trial by court.

SECTION.
2570. Submission of controversy on agreed statement.
2571. Record, what constitutes.
2572. Judgment, enforcement and reversal.

SEC. 2567. In actions arising on contract the trial by jury may be waived by the parties, and in other actions, with the assent of the court, in the following manner:

First—By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney;

Second—By written consent, in person or by attorney, filed with the clerk;

Third—By oral consent in open court, entered on the journal;

Fourth—It shall be the duty of all persons desiring a jury trial to demand a jury as their cases are reached upon the formal call of the docket, and a failure to make such demand, accompanied with a deposit of twelve dollars, as a jury fee, shall be deemed a waiver of a trial by jury at that time, and a jury shall not thereafter be allowed or called in such case during that term. The jury fees in cases where jury trials are demanded shall be paid to the clerk of the court, and by him paid into the county treasury at the close of each week, and he shall tax as costs in each case tried by jury the jury fee of twelve dollars, to be recovered of the unsuccessful party, as other costs, and in case the party making such deposit is successful he shall recover such deposit from the opposite party, as part of his costs in the case. [S. L. 1886, ch. 60, § 227. R. S. O., § 5204.]

General and special findings by court.

SEC. 2568. Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its findings, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial, in which case the court shall state in writing the conclusions of fact found separately from the conclusions of law. [S. L. 1886, ch. 60, § 228. R. S. O., § 5205.]

Jury provisions to apply to trial by court.

SEC. 2569. The provisions of this chapter respecting trials by jury shall apply, so far as they are in their nature applicable, to trials by the court. [S. L. 1886, ch. 60, § 229. R. S. O., § 5206.]

Submission of controversy on agreed statement.

SEC. 2570. Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action were brought; but it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties; and the court shall, thereupon, hear and determine the case, and render judgment as if an action were pending. [S. L. 1886, ch. 60, § 230. R. S. O., § 5207.]

Record, what constitutes.

SEC. 2571. The case, the submission and the judgment shall constitute the record. [S. L. 1886, ch. 60, § 231. R. S. O., § 5208.]

Judgment, enforcement and reversal.

SEC. 2572. The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action, unless otherwise provided in the submission. [S. L. 1886, ch. 60, § 232. R. S. O., § 5209.]

SUB-DIVISION 3. TRIAL BY REFEREES.

SECTION.
2573. Reference of issues by consent.
2574. Reference by court without consent.
2575. Further reference in vacation.
2576. Trial before referee—Report—Judgment.
2577. Referees, how chosen.
SECTION.
2578. Reference in probate court.
2579. Referee to sign bills of exception.
2580. Oath of referees.
2581. Compensation of referees.

Reference of issues by consent.

SEC. 2573. All or any of the issues in the action or proceeding, whether of fact or of law, or both, may be referred by the court, or a judge thereof in vacation, upon the written consent of the parties, or upon their oral consent in court, entered upon the journal. [S. L. 1886, ch. 60, § 233. R. S. O., § 5210.]

Reference by court without consent.

SEC. 2574. When the parties do not consent, the court, or a judge thereof in vacation, may, upon the application of a party, or of its or his motion, direct a reference in any case in which the parties are not entitled by the constitution or laws of the United States, or the laws of Wyoming Territory, to a trial by jury. [S. L. 1886, ch. 60, § 234. R. S. O., § 5211.]

Further reference in vacation.

SEC. 2575. If a referee die, or be disabled, or refuse to serve, a judge of the court in which the action is pending may, in vacation, appoint another person to take his place, or again direct a reference as provided in the two preceding sections. [S. L. 1886, ch. 60, § 235. R. S. O., § 5212.]

Trial before referee—Report—Judgment.

SEC. 2576. The trial by referees shall be conducted in the same manner as a trial by the court; referees may summon and enforce the attendance of witnesses, administer all necessary oaths in the trial of the case and grant adjournments, the same as the court; they must state the facts found, and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed, in like manner; their report upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court; when the reference is to report facts, the report shall have the effect of a special verdict; and, when the court directs it to be done, the referee shall reduce the testimony of the witnesses to writing and require them severally to subscribe the same. [S. L. 1886, ch. 60, § 236. R. S. O., § 5213.]

Referees, how chosen.

SEC. 2577. In all cases of reference, except when an infant is a party, the parties may agree upon a suitable person or persons, not exceeding three, and a reference shall be ordered accordingly; and if the parties do not agree the court shall appoint referees not exceeding three, who shall be free from exception. [S. L. 1886, ch. 60, § 237. R. S. O., § 5214.]

Reference in probate court.

SEC. 2578. A reference as provided in this chapter cannot be ordered by a probate court unless by consent of the parties to the reference and the referees. [S. L. 1886, ch. 60, § 238. R. S. O., § 5215.]

Referees to sign bills of exception.

SEC. 2579. The referee shall sign any true exceptions taken to an order or decision by them made in the case, and return the same with their report to the court which made the reference. [S. L. 1886, ch. 60, § 239. R. S. O., § 5216.]

Oath of referees.

SEC. 2580. The referees must be sworn well and faithfully to hear and examine the cause, and to make a just and true report therein, according to the best of their understanding; and the oath may be administered by any person authorized to take depositions. [S. L. 1886, ch. 60, § 240. R. S. O., § 5217.]

Compensation of referees.

SEC. 2581. The referees shall be allowed such compensation for their services as the court deems just and proper, which shall be taxed as part of the costs in the case. [S. L. 1886, ch. 60, § 241. R. S. O., § 5218.]

SUB-DIVISION 4. TRIAL BY MASTER COMMISSIONERS.

SECTION.
2582. Appointment of master commissioner.
2583. Oath and bond.
2584. Special master commissioner.
SECTION.
2585. References to master commissioners.
2586. Powers and duties.
2587. Fees of master commissioners.

Appointment of master commissioners.

SEC. 2582. The district court may appoint in each county such number of persons as may be necessary, to be master commissioners, who shall hold their office for the term of three years, unless removed by the court for good cause; and the master commissioners so appointed shall have power to administer all oaths required in the discharge of their official duties, or authorized to be administered by the laws of this territory. [S. L. 1886, ch. 60, § 242. R. S. O., § 5219.]

Oath and bond.

SEC. 2583. Before a master commissioner enters upon the duties of his office, he must be sworn to perform them faithfully, and shall also, with surety, to be approved by the court, execute an undertaking to the Territory of Wyoming, in such sum as the court shall direct, to the effect that he will pay over all money, and faithfully discharge the duties of his office; the court may, at any time, require a master commissioner to give other or further security, and in default thereof, by a day fixed by the court, his office shall thereby be vacated; and the undertaking shall be filed in the office of the county clerk, and may be sued upon as provided in section twenty-three hundred and eighty-three. [S. L. 1886, ch, 60, § 243. R. S. O., § 5220.]

Special master commissioners.

SEC. 2584. The court may appoint a special master commissioner, who shall be sworn faithfully to discharge his duties, and who may administer all necessary oaths on any hearing before him. [S. L. 1886, ch. 60, § 244. R. S. O., § 5221.]

References to master commissioners.

SEC. 2585. The court, or a judge thereof in vacation, may, upon motion of a party, refer an action in which the parties are not entitled to a trial by jury, to a regular or special master commissioner, to take the testimony in writing, and report the same to the court, and therewith his conclusions on the law and facts involved in the issues, which report may be excepted to by the parties, and confirmed, modified, or set aside by the court. [S. L. 1886, ch. 60, § 245. R. S. O., § 5222.]

Powers and duties.

SEC. 2586. A master commissioner, or special master commissioner, may summon and enforce the attendance of witnesses, and grant adjournments, the same as the court; and, when the court directs it to be done, shall require the witnesses severally to subscribe their testimony. [S. L. 1886, ch. 60, § 246. R. S. O., § 5223.]

Fees of master commissioners.

SEC. 2587. A master commissioner, or special master commissioner, shall be allowed such fees as are allowed for similar services to other officers. [S. L. 1886, ch. 60, § 247. R. S. O., § 5224.]

CHAPTER 3.

EVIDENCE.

SUB-DIVISION 1. COMPETENCY OF WITNESSES AND EVIDENCE.
SUB-DIVISION 2. MEANS OF SECURING ATTENDANCE.
SUB-DIVISION 3. MODES OF TAKING TESTIMONY.
SUB-DIVISION 4. ADMISSION AND INSPECTION OF DOCUMENTS.
SUB-DIVISION 5. VARIANCE.

SUB-DIVISION 1. COMPETENCY OF WITNESSES AND EVIDENCE.

SECTION.
2588. Who are competent witnesses.
2589. Privileged communications and acts.
2590. When party to action shall not testify.
SECTION.
2591. Opposite party may be compelled to testify
2592. Laws of other states, how proven.
2593. Copies of public documents.

Who are competent witnesses.

SEC. 2588. All persons are competent witnesses, except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly. [S. L. 1886, ch. 60, § 248. R. S. O., § 5240.]

Privileged communications and acts.

SEC. 2589. The following persons shall not testify in certain respects:

First—An attorney, concerning a communication made to him by his client in that relation, or his advice to his client; or a physician, concerning a communication made to him by his patient in that relation, or his advice to his patient; but the attorney or physician may testify by express consent of the client or patient; and if the client or patient voluntarily testify, the attorney or physician may be compelled to testify on the same subject;

Second—A clergyman or priest, concerning a confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs;

Third—Husband or wife, concerning any communication made by one to the other during coverture, unless the communication was made in the known presence or hearing of a third person competent to be a witness; and the rule shall be the same if the marital relation has ceased to exist;

Fourth—A person who assigns his claim or interest concerning any matter in respect to which he would not, if a party, be permitted to testify;

Fifth—A person who, if a party, would be restricted in his evidence under section twenty-five hundred and ninety, shall, where the property or thing is sold or transferred by an executor, administrator, guardian or trustee, heir, devisee or legatee, be restricted in the same manner in any action or proceeding concerning such property or thing. [S. L. 1886, ch. 60, § 249. R. S. O., § 5241.]

When party to action shall not testify.

SEC. 2590. A party shall not testify where the adverse party is the guardian or trustee of either a deaf and dumb or an insane person, or of a child of a deceased person, or is an executor or administrator, or claims or defends as heir, grantee, assignee, devisee or legatee of a deceased person, except:

First—To facts which occurred subsequent to the appointment of the guardian or trustee of an insane person, and, in the other cases, subsequent to the time the decedent, grantor, assignor or testator died;

Second—When the action or proceeding relates to a contract made through an agent, by a person since deceased, and the agent testifies, a party may testify on the same subject;

Third—If a party, or one having a direct interest, testify to transactions or conversations with another party, the latter may testify as the same transactions or conversations;

Fourth—If a party offer evidence of conversations or admissions of the opposite party, the latter may testify concerning the same conversations or admissions;

Fifth—In an action or proceeding by or against a partner or joint contractor, the adverse party shall not testify to transactions with, or admissions by, a partner or joint contractor since deceased, unless the same were made in the presence of the surviving partner or joint contractor; and this rule shall be applied without regard to the character in which the parties sue or are sued;

Sixth—If the claim or defense is founded on a book account a party may testify that the book is his account book, that it is a book of original entries, that the entries therein were made by himself, a person since deceased, or a disinterested person non-resident of the county; whereupon the book shall be competent evidence; and such book may be admitted in evidence in any case, without regard to the parties, upon like proof by any competent witness;

Seventh—If a party, after testifying orally, die, the evidence may be proved by either party, on a further trial of the case; whereupon the opposite party may testify as to the same matters;

Eighth—If a party die, and his deposition be offered in evidence, the opposite party may testify as to all competent matters therein;

Nothing in this section contained shall apply to actions for causing death, or actions or proceedings involving the validity of a deed, will or codicil; and when a case is plainly within the reason and spirit of the last three sections, though not within the strict letter, their principles shall be applied. [S. L. 1886, ch. 60, § 250. R. S. O., § 5242.]

Opposite party may be compelled to testify.

SEC. 2591. A party may compel the adverse party to testify orally or by deposition, as any other witness may be thus compelled. [S. L. 1886, ch. 60, § 251. R. S. O., § 5243.]

Laws of other states, how proven.

SEC. 2592. Printed copies of written law enacted by any other state, a territory or a foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such state, territory or government, shall be admitted by the courts and officers of this territory, on all occasions, as presumptive evidence of such law; the unwritten or common law of any other state, or of a territory, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudicated in their courts may also be admitted as presumptive evidence of such law. [S. L. 1886, ch. 60, § 252. R. S. O., § 5244.]

Copies of public documents.

Sec. 2593. Copies of papers, books and records, on file or deposited by virtue of any law, in the office of the governor or secretary of the territory, and certified by the said secretary under the great seal of the territory, shall be competent evidence and have the same force and effect as the originals would if produced. [S. L. 1886, ch. 60, § 253. R. S. O., § 5245.]

SUB-DIVISION 2. MEANS OF SECURING ATTENDANCE.

SECTION.
2594. Procuring and serving of subpœna.
2595. Contents of subpœna.
2596. Subpœna on taking depositions.
2597. Manner of serving subpœna.
2598. Witness not compelled to leave county.
2599. Demand for fees and expenses.
2600. Contempt of court by witness.
2601. Attachment against witnesses.
2602. Proceedings for contempt by witness—Punishment.
SECTION.
2603. Release of imprisoned witness.
2604. Proceedings on the arrest of a witness.
2605. Examination of witness in prison.
2606. Custody of prisoner while deposition being taken.
2607. Witness not to be sued while obeying subpœna.
2608. Oath of witness.

Procuring and serving of subpœna.

Sec. 2594. The clerks of the several courts and judges of the probate courts shall, on application of a person having a cause or other matter pending in court, issue a subpœna for witnesses, under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by the sheriff, coroner or any constable of the county, or by the party or any other person; and when a subpœna is not served by the sheriff, coroner or constable, proof of service shall be shown by affidavit, but costs of such service shall not be taxed. [S. L. 1886, ch. 60, § 254. R. S. O., § 5246.]

Contents of subpœna.

Sec. 2595. The subpœna shall be directed to a person therein named, requiring him to attend at a particular time and place to testify as a witness, and it may contain a clause directing the witness to bring with him any book, writing or other thing under his control, which he may be compelled to produce as evidence. [S. L. 1886, ch. 60, § 255. R. S. O., § 5247.]

Subpœna on taking deposition.

Sec. 2596. When the attendance of a witness before an officer authorized to take depositions is required, the subpœna shall be issued by such officer. [S. L. 1886, ch. 60, § 256. R. S. O., § 5248.]

Manner of serving subpœna.

Sec. 2597. The subpœna shall be served either by reading or by copy delivered to the witness or left at his usual place of residence; but such copy need not contain the name of any other witness. [S. L. 1886, ch. 60, § 257. R. S. O., § 5249.]

Witness not compelled to leave county.

Sec. 2598. A witness shall not be compelled to go out of the county where he resides, or may be subpœnaed, to testify on the trial of a civil action or to give his deposition. [S. L. 1886, ch. 60, § 258. R. S. O., § 5250.]

Demand for fees and expenses.

Sec. 2599. A witness, after the case is called for trial, and before he is sworn, may demand his traveling fees and fees for one day's attendance, and if the same be not paid he shall not be obliged to testify; at the commencement of the trial each day after the first day, he may demand his fees for that day's attendance, and if the same be not paid he shall not be compelled to remain, and the clerk shall note such payment of fees in the witness book. [S. L. 1886, ch. 60, § 259. R. S. O., § 5251.]

Contempt of court by witness.

SEC. 2600. Disobedience of a subpœna, a refusal to be sworn, except in case of a refusal to pay fees on demand, a refusal to answer as a witness or to subscribe a deposition when lawfully ordered, may be punished as a contempt of the court or officer by whom the attendance or testimony of the witness is required. [S. L. 1886, ch. 60, § 260. R. S. O., § 5252.]

Attachment against witnesses.

SEC. 2601. When a witness fails to attend in obedience to a subpœna, the court or officer before whom his attendance is required may issue an attachment to the sheriff, coroner, or constable of the county, commanding him to arrest and bring the person therein named before such court or officer, at a time and place to be fixed in the attachment, to give his testimony, and answer for the contempt; if the attachment is not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance, which sum shall be indorsed on the back of the attachment; and if no sum is so fixed and indorsed, it shall be one hundred dollars; and if the witness was not personally served, the court may, by rule, order him to show cause why an attachment should not issue against him. [S. L. 1886, ch. 60, § 261. R. S. O., § 5253.]

Proceedings for contempt by witness—Punishment.

SEC. 2602. The punishment for the contempt mentioned in section twenty-six hundred, shall be as follows: When the witness fails to attend in obedience to a subpœna, the court or officer may fine him in a sum not exceeding fifty dollars; in other cases the court or officer may fine the witness in a sum not exceeding fifty nor less than five dollars, or may imprison him in the county jail, there to remain until he submits to be sworn, testifies, or gives his deposition, and the fine imposed by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for whom the witness was subpœnæd; and the witness shall also be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, to testify or give his deposition. [S. L. 1886, ch. 60, § 262. R. S. O., § 5254.]

Release of imprisoned witness.

SEC. 2603. A witness so imprisoned by an officer may apply to a judge of the supreme court, district court or probate court, who may discharge him if it appears that his imprisonment is illegal. [S. L. 1886, ch. 60, § 263. R. S. O., § 5255.]

Proceedings on the arrest of a witness.

SEC. 2604. Every attachment for the arrest or order of commitment to prison of a witness by a court or officer pursuant to this chapter, must be under the seal of the court or officer, if the officer has an official seal, and must specify particularly the cause of the arrest or commitment; if the commitment is for a refusal to answer a question, such question must be stated in the order; and the order of commitment may be directed to the sheriff, coroner or any constable of the county where the witness resides, or is at that time, and shall be executed by committing him to the jail of the county and delivering a copy of the order to the jailor. [S. L. 1886, ch. 60, § 264. R. S. O., § 5256.]

Examination of witness in prison.

SEC. 2605. A person confined in prison in this territory may, by order of a court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition. [S. L. 1886, ch. 60, § 265. R. S. O., § 5257.]

Custody of prisoner while deposition being taken.

SEC. 2606. While a prisoner's deposition is being taken he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition. [S. L. 1886, ch. 60, § 266. R. S. O., 5258.]

Witness not to be sued while obeying subpœna.

SEC. 2607. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county while going, returning or attending in obedience to a subpœna. [S. L. 1886, ch. 60, § 267. R. S. O., § 5259.]

Oath of witness.

SEC. 2608. Before testifying the witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. [S. L. 1886, ch. 60, § 268. R. S. O., § 5260.]

SUB-DIVISION 3. MODES OF TAKING TESTIMONY.

SECTION.
2609. Modes of taking testimony prescribed.
2610. Kinds of testimony defined.
2611. Use of affidavits.
2612. Affidavit, before whom made.
2613. Depositions, when may be used.
2614. Depositions, when may be taken.
2615. Testimony before referee, etc., use of as deposition.
2616. Depositions in foreign suits.
2617. Before whom depositions taken in the territory.
2618. Before whom taken out of territory.
2619. Before whom not to be taken.
2620. Commission to take depositions.
2621. Notice to take depositions—Service.
2622. Notice by publication.
2623. By whom depositions to be written.
SECTION.
2624. Transmission of depositions to clerk—When opened.
2625. Depositions may be used before justice, referee, etc.
2626. When depositions may be used in other actions.
2627. Authentication of depositions.
2628. Certificate of officer.
2629. Condition upon which deposition may be read.
2630. Time of filing deposition.
2631. Fees for taking depositions.
2632. Exceptions to depositions to be in writing.
2633. When to be made and filed.
2634. To be decided before trial.
2635. When exceptions waived.

Mode of testimony prescribed.

SEC. 2609. The testimony of witnesses may be taken:

First—By affidavit;

Second—By deposition;

Third—By oral examination. [S. L. 1886, ch. 60, § 269. R. S. O., § 5261.]

Kinds of testimony defined.

SEC. 2610. An affidavit is a written declaration under oath, made without notice to the adverse party; a deposition is a written declaration under oath, made upon notice to the adverse party; and oral testimony is that delivered from the lips of the witness. [S. L. 1886, ch. 60, § 270. R. S. O., 5262.]

Use of affidavits.

SEC. 2611. An affidavit may be used to verify a pleading, to prove the service of a summons, notice or other process, in an action to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law. [S. L. 1886, ch. 60, § 271. R. S. O., 5263.]

Affidavit, before whom made.

SEC. 2612. An affidavit may be made in or out of this territory, before any person authorized to take depositions, and must be authenticated in the same way as depositions, except as provided in section twenty-four hundred and ninety-four. [S. L. 1886, ch. 60, § 272. R. S. O., 5264.]

For officers authorized to take depositions, see §§ 2617, 2618, and 2619.

Depositions, when may be used.

SEC. 2613. The deposition of a witness may be used only in the following cases:

First—When the witness does not reside in, or is absent from, the county where the action or proceeding is pending, or by change of venue is sent for trial;

Second—When the witness is dead, or, from age, infirmity or imprisonment is unable to attend court;

Third—When the testimony is required upon a motion, or when the oral examination of the witness is not required. [S. L. 1886, ch. 60, § 273. R. S. O., § 5265.]

Depositions, when may be taken.

Sec. 2614. Either party may commence taking testimony by deposition at any time after service upon the defendant. [S. L. 1886, ch. 60, § 274. R. S. O., § 5266.]

Testimony before referee, etc.—Use of as deposition.

Sec. 2615. Testimony taken in an action or proceeding on the order of a court by a referee, master commissioner or special master commissioner, subscribed by the witness, and reported to the court by the officer, may be used as a deposition taken in the case. [S. L. 1886, ch. 60, § 275. R. S. O., § 5267.]

Depositions in foreign suits.

Sec. 2616. Depositions may also be taken when the testimony is required in an action, cause or matter pending before any court or authority without this territory. [S. L. 1886, ch. 60, § 276. R. S. O., § 5268.]

Before whom depositions taken in the territory.

Sec. 2617. Depositions may be taken in this territory before a judge or clerk of the supreme court, a judge or clerk of the district court, a probate judge, justice of the peace, notary public, mayor or chief magistrate of a municipal corporation, master commissioner or any person empowered by a special commission; but depositions taken in this territory, to be used therein, must be taken by an officer or person whose authority is derived within the territory, and if to be used out of the territory they may be taken before a commissioner or officer who derives his authority from the state, district or territory in which they are to be used. [S. L. 1886, ch. 60, § 277. R. S. O., § 5269.]

Before whom taken out of territory.

Sec. 2618. Depositions may be taken out of this territory before a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any municipal corporation, a commissioner appointed by the governor of this territory to take depositions, or any person authorized by a special commission from this territory. [S. L. 1886, ch. 60, § 278. R. S. O., § 5270.]

Before whom not to be taken.

Sec. 2619. The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding. [S. L. 1886, ch. 60, § 279. R. S. O., § 5271.]

Commission to take depositions.

Sec. 2620. Any court of record of this territory, or a judge thereof, may grant a commission to take depositions within or without the territory, which commission must be issued by the clerk, and under the seal, of the court granting the same; and the person or persons to whom it is issued must be named therein, and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree. [S. L. 1886, ch. 60, § 280. R. S. O., § 5272.]

Notice to take depositions—Service.

Sec. 2621. Written notice of the intention to take a deposition shall be given to the adverse party, except in cases in which it is to be taken under a special commission, and shall specify the action or proceeding, the name of the court or tribunal in which the deposition is to be used, and the time when and place where it will be taken, and, in case the deposition of a party to the suit be taken, it shall not be used in his own behalf, unless the notice specified that his deposition would be taken; the notice shall be served upon the adverse party, his agent or attorney of record, or left at the usual place of abode of such party or his agent, and the deposition shall only be used against such parties as are served with notice in one of the modes prescribed; the notice shall be served so as to allow the adverse party sufficient time, exclusive of Sundays, the day of service, and one day of preparation, to travel by the usual routes and modes of conveyance to the place named in the notice; and the examination may, if so stated in the notice, be adjourned from day to day. [S. L. 1886, ch. 60, § 281. R. S. O. § 5273.]

Notice by publication.

SEC. 2622. When the party against whom a deposition is to be read is absent from or a non-resident of the territory, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication; the publication must be made for three consecutive weeks, in a newspaper published in the county where the action or proceeding is pending, if one is published therein, and if no newspaper is published therein, then in a newspaper published in the territory, and of general circulation in that county; and the publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section twenty-four hundred and thirty-eight. [S. L. 1886, ch. 60, § 282. R. S. O., § 5274.]

By whom depositions to be written.

SEC. 2623. The deposition shall be written in the presence of the officer before whom it is taken, either by the officer, the witness, or some disinterested person, and subscribed by the witness. [S. L. 1886, ch. 60, § 283. R. S. O., § 5275.]

Transmission of deposition to clerk—When opened.

SEC. 2624. The deposition so taken shall be sealed in an envelope indorsed with the title of the cause, and the name of the officer before whom it was taken, and such officer shall address and transmit the same to the clerk of the court where the action or proceeding is pending; and it shall remain under seal until opened by the clerk, by order of the court, or at the request of a party to the action or proceeding, or his attorney. [S. L. 1886, ch. 60, § 284. R. S. O., § 5276.]

Depositions may be used before justice, referee, etc.

SEC. 2625. Depositions taken pursuant to this chapter shall be admitted in evidence on the trial of any civil action or proceeding pending before a justice of the peace, or mayor, or other judicial officer of a municipal corporation, or before arbitrators, a referee or a master, and such depositions shall be sealed up, indorsed with the title of the action or proceeding, the name of the officer before whom taken and addressed and transmitted by such officer to such justice, mayor or other judicial officer, arbitrators, referee or master. [S. L. 1886, ch. 60, § 285. R. S. O., § 5277.]

When depositions may be used in other actions.

SEC. 2626. A deposition may be read in any stage of the action or proceeding, or in any other action or proceeding upon the same matter between the same parties, subject, however, to such exceptions as may be taken thereto under the provisions of this chapter. [S. L. 1886, ch. 60, § 286. R. S. O., § 5278.]

Authentication of depositions.

SEC. 2627. Depositions taken pursuant to this chapter by a judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this territory or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication shall be required; if the officer before whom the same is taken has no official seal, the depositions, if not taken in this territory, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in court or by the certificate and seal of the secretary or other officer of the state or territory, who is the custodian of the great seal of the state or territory, or the certificate and official seal of the clerk or prothonotary of any court of the state or territory where taken, attesting that such officer was, at the time of taking the same, authorized within the meaning of this chapter to take the same, but if the deposition is taken within this territory by an officer not having a seal, or within or without this territory under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner before whom it is taken, and when a deposition is not certified according to law, the fact neglected to be certified may be shown by parol proof. [S. L. 1886, ch. 60, § 287. R. S. O., § 5279.]

Certificate of officer.

SEC. 2628. The officer before whom the deposition is taken shall annex thereto a certificate showing the following facts:

First—That the witness was first sworn to testify the truth, the whole truth and nothing but the truth;

Second—That the deposition was reduced to writing by some proper person, naming him;

Third—That the deposition was written and subscribed in the presence of the officer certifying thereto;

Fourth—That the deposition was taken at the time and place specified in the notice.

But if the deposition be taken out of the territory by an officer authorized to take the same, the certificate may be in the foregoing form, or in the form authorized by the laws of the place where taken, and in the latter case the certificate shall be deemed *prima facie*, as made in accordance with the laws of the place where made when it so certifies. [S. L. 1886, ch. 60, § 288. R. S. O., 5280.]

Condition upon which deposition may be read.

SEC. 2629. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court that for a cause specified in section twenty-six hundred and thirteen, the attendance of the witness cannot be procured. [S. L. 1886, ch. 60, § 289. R. S. O., § 5281.]

Time of filing depositions.

SEC. 2630. Every deposition intended to be read in evidence on the trial must be filed at least one day before the day of trial. [S. L. 1886, ch. 60, § 290. R. S. O., § 5282.]

Fees for taking depositions.

SEC. 2631. The following fees shall be allowed for taking depositions in this territory: For taking depositions fifteen cents per folio, and five dollars for all other services in taking, certifying, directing, indorsing and transmitting the same. [S. L. 1886, ch. 60, § 291.]

Exceptions to depositions to be in writing.

SEC. 2632. Exceptions to depositions shall be in writing, shall specify the grounds of objection, and shall be filed with the papers in the cause. [S. L. 1886, ch. 60, § 292. R. S. O., § 5284.]

When to be made and filed.

SEC. 2633. No exceptions other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial. [S. L. 1886, ch. 60, § 293. R. S. O., § 5285.]

To be decided before trial.

SEC. 2634. The court shall, on motion of either party, hear and decide questions arising on exceptions to depositions before the commencement of the trial. [S. L. 1886, ch. 60, § 294. R. S. O., § 5286.]

When exceptions waived.

SEC. 2635. Errors of the court in its decisions upon exceptions to depositions are waived, unless excepted to. [S. L. 1886, ch. 60, § 295. R. S. O., § 5287.]

SUB-DIVISION 4. ADMISSION AND INSPECTION OF DOCUMENTS.

SECTION.
2636. Admission of genuineness of papers may be required—Costs.
2637. Production of books and papers.
2638. Inspection of books and documents.
SECTION.
2639. Appointment of master to inspect books, etc.
2640. Copies of writings, method of obtaining.
2641. Action for discovery.

Admission of genuineness of papers may be required—Costs.

SEC. 2636. Either party may exhibit to the other, or to his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of its genuineness; and if the adverse party, or his attorney, fail to give the admission in writing within four days after the request, and if the party exhibiting the paper or document be afterward put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such cost and expense, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it appears to the satisfaction of the court that there were good reasons for the refusal. [S. L. 1886, ch. 60, § 296. R. S. O., § 5288.]

Production of books and papers.

SEC. 2637. The court in which an action is pending, may, on motion and on reasonable notice thereof, require the parties to produce books and writings in their possession or power which contain evidence pertinent to the issue, in cases and under circumstances where they might heretofore have been compelled to produce the same by the ordinary rules of proceeding in chancery; if the plaintiff fail to comply with such order to produce books or writings, the court may, on motion, give judgment for the defendant, as in case of non-suit; and if a defendant fail to comply with such order to produce books or writings, the court, on motion, may give judgment against him by default. [S.L. 1886, ch. 60, § 297. R. S. O., § 5289.]

Inspection of books and documents.

SEC. 2638. Either party, or his attorney, may also demand of the adverse party an inspection and copy, or permission to take a copy, of a book, paper, or document in his possession, or under his control, containing evidence relating to the merits of the action or defense, which demand shall be in writing, and shall specify the book, paper, or document, with sufficient particularity to enable the other party to distinguish it; if compliance with the demand within four days be refused, the court or judge may, on motion, and notice to the adverse party, order the adverse party to give the other, within the time specified, an inspection and copy, or permission to take a copy, of such book, paper or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party, by affidavit, alleges it to be; but this section shall not be construed to prevent a party from compelling another to produce any book, paper or document when he is examined as a witness. [S. L. 1886, ch. 60, § 298. R. S. O., § 5290.]

Appointment of master to inspect books, etc.

SEC. 2639. If the party in possession of any such book, paper, writing or document, allege that the same, or any part thereof, is of mere private interest, or of such character that it ought not to be produced, or an inspection or copy thereof allowed or taken, the court may, on motion of either party, direct a private examination thereof by a master; if the master find that such book, paper, writing or document contains matter pertinent to the cause, and proper to be produced, inspected or copied, he shall report the same to the court, or a copy of such part as he finds pertinent to the cause, and proper to be produced, inspected or copied; and the book, paper, writing, or document, or part thereof, so reported, shall be admitted in evidence on the trial, unless excluded by the court for proper cause. [S. L. 1886, ch. 60, § 299. R. S. O., § 5291.]

Copies of writings, method of obtaining.

SEC. 2640. Either party, or his attorney, shall, if required, deliver to the other party, or his attorney, a copy of any instrument of writing whereon the action or defense is founded, or which he intends to offer in evidence at the trial; and if the plaintiff or defendant refuse to furnish the copy required, the party so refusing shall not be permitted to give in evidence at the trial the original, of which a copy has been refused; but this section shall not apply to a paper, a copy of which is filed with a pleading, as provided in section twenty-four hundred and seventy-two. [S. L. 1886, ch. 60, § 300. R. S. O., § 5292.]

Action for discovery.

SEC. 2641. When a person claiming to have a cause of action, or a defense to an action commenced against him, is unable, without a discovery of the fact from the adverse party, to file his petition or answer, such person may bring his action for discovery, setting forth in his petition the necessity for such discovery, and the grounds thereof, and such interrogatories relating to the subject matter of the discovery as may be necessary to procure the discovery sought, which, if not demurred to, shall be fully and directly answered under oath by the defendant; and upon the final disposition of the action, the costs thereof shall be taxed in such manner as the court deems equitable. [S. L. 1886, ch. 60, § 301. R. S. O., § 5293.]

SUB-DIVISION 5. VARIANCE.

SECTION.
2642. Variance, when material- Amendment.
2643. Amendment when variance not material.

SECTION.
2644. Failure of proof not a variance.

Variance, when material—Amendment.

SEC. 2642. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits, and when it is alleged that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as are just. [S. L. 1886, ch. 60, § 302. R. S. O., § 5294.]

Amendment when variance not material.

SEC. 2643. When the variance is not material the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs. [S. L. 1886, ch. 60, § 303. R. S. O., 5295.]

Failure of proof not a variance.

SEC. 2644. When the allegation of the claim or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its general scope and meaning it shall not be deemed a case of variance within the last two sections, but a failure of proof. [S. L. 1886, ch. 60, § 304. R. S. O., § 5296.]

CHAPTER 4.

EXCEPTIONS.

SECTION.
2645. Exception defined.
2646. When to be taken.
2647. Manner of stating.
2648. When to be entered on record.

SECTION.
2649. When bill of exceptions necessary—Signing and filing.
2650. Immaterial exceptions disregarded.
2651. Exceptions may be withdrawn.

Exception defined.

SEC. 2645. An exception is an objection taken to a decision of the court upon a matter of law. [S. L. 1886, ch. 60, § 305. R. S. O., § 5297.]

When to be taken.

SEC. 2646. The party objecting to the decision must except at the time the decision is made; and time may be given to reduce the exception to writing, but not beyond the first day of the next succeeding term. [S. L. 1886, ch. 60, § 306. R. S. O., § 5298.]

Manner of stating.

SEC. 2947. No particular form of exception is required, and the exception must be stated, with the facts, or so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible. [S. L. 1886, ch. 60, § 307. R. S. O., § 5299.]

When to be entered on record.

SEC. 2648. When the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted at the end of the entry that he excepts. [S. L. 1886, ch. 60, § 308. R. S. O., § 5300.]

When bill of exceptions necessary—Signing and filing.

SEC. 2649. When the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, or the exception is to the opinion of the court on a motion to direct a non-suit, to arrest the testimony from the jury, or for a new trial for misdirection by the court to the jury, or because the verdict, or if a jury was waived, the finding of the court, is against the law or the evidence, the party excepting must reduce his exception to writing, and present it to the court for allowance. If true it shall be the duty of a majority of the judges composing the court, or of the judge or court before whom the case was or is being tried, to allow and sign it, whereupon it shall be filed with the pleadings as a part of the record, but not spread at large upon the journal. If the writing is not true, the court shall correct it, or suggest the correction to be made, and it shall then be signed as aforesaid. [S. L. 1886, ch. 60, § 309. R. S. O., §§ 5301 and 5302.]

Immaterial exceptions disregarded.

SEC. 2650. No exception shall be regarded unless it is material, and prejudicial to the substantial rights of the party excepting. [S. L. 1886, ch. 60, § 310. R. S. O., § 5303.]

Exceptions may be withdrawn.

SEC. 2651. Exceptions taken to the decisions of a court of record, may, by leave of such court, be withdrawn from the files by the party taking the same at any time before proceedings in error are commenced, and before the exceptions are recorded. [S. L. 1886, ch. 60, § 311. R. S. O., § 5304.]

CHAPTER 5.

NEW TRIAL.

SECTION.
2652. New trial defined—Causes for.
2653. When smallness of damages not sufficient cause.
SECTION.
2654. When application to be made.
2655. Application to be by written motion.
2656. Application after term to be by petition.

New trial defined—Causes for.

SEC. 2652. A new trial is a re-examination, in the same court of an issue of fact, after a verdict by a jury, a report of a referee or master, or a decision by the court; and the former verdict, report, or decision shall be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party:

First—Irregularity in the proceedings of the court, jury, referee, master or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

Second—Misconduct of the jury or prevailing party;

Third—Accident or surprise, which ordinary prudence could not have guarded against;

Fourth—Excessive damages appearing to have been given under the influence of passion or prejudice;

Fifth—Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury or detention of property;

Sixth—That the verdict, report or decision is not sustained by sufficient evidence or is contrary to law;

Seventh—Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial;

Eighth—Error of law occurring at the trial, and excepted to by the party making the application. [S. L. 1886, ch. 50, § 312. R. S. O., § 5305.]

When smallness of damages not sufficient cause.

SEC. 2653. A new trial shall not be granted on account of the smallness of damages, in an action for an injury to the person or reputation, nor in any other action where the damages equal the actual pecuniary injury sustained. [S. L. 1886, ch. 60, § 313. R. S. O., § 5306.]

When application to be made.

SEC. 2654. The application for a new trial must be made at the term the verdict, report, or decision is rendered; and except for the cause of newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial, shall be made within three days after the verdict or decision is rendered, unless such party is unavoidably prevented from filing the same within such time. [S. L. 1886, ch. 60, § 314. R. S. O., § 5307.]

Application to be by written motion.

SEC. 2655. The application must be made by motion, upon written grounds, filed at the time of making the motion; the causes enumerated in subdivisions two, three and seven, section twenty-six hundred and fifty-two, must be sustained by affidavits or depositions, showing their truth, and may be controverted by affidavits or depositions, and for this purpose depositions may also be taken in the county where the action is pending. [S. L. 1886, ch. 60, § 315. R. S. O., § 5308.]

Application after term to be by petition.

SEC. 2656. When the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the term at which the verdict, report, or decision was rendered or made, the application may be made by petition, filed as in other cases, not later than the second term after the discovery; whereupon a summons shall issue, and be returnable and served, or publication made, as prescribed in section twenty-four hundred and thirty-seven; the facts stated in the petition shall be considered as denied without answer; if the service be complete in vacation, the case shall be heard and summarily decided at the ensuing term, and if in term, it shall be heard and decided after the expiration of twenty days from such service; and the case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases; but no petition shall be filed more than one year after the final judgment was rendered. [S. L. 1886, ch. 60, § 316. R. S. O., § 5309.]

DIVISION 4. JUDGMENT.

CHAPTER 1. JUDGMENT IN GENERAL.
CHAPTER 2. JUDGMENT UPON FAILURE TO ANSWER, AND BY CONFESSION.
CHAPTER 3. MANNER OF GIVING AND ENTERING JUDGMENT.
CHAPTER 4. JUDGMENT FOR COSTS, AND ITS ENFORCEMENT.
CHAPTER 5. NEW TRIAL, AND OTHER RELIEF AFTER JUDGMENT.
CHAPTER 6. REVIVOR OF, AND NEW PARTIES TO JUDGMENT.

CHAPTER 1.

JUDGMENT IN GENERAL.

SECTION.
2657. Judgment and order defined.
2658. For and against whom judgment may be given.
2659. Against defendants at different times.
2660. Dismissal of action for failure to prosecute.
2661. When action may be dismissed without prejudice.
SECTION.
2662. Dismissal not to affect counter-claim, etc.
2663. Judgment on foreclosure.
2664. Procedure when mortgaged property in more than one county.
2665. Judgment for conveyances, etc.—Effect.
2666. Judgments against married women.

Judgment and order defined.

SEC. 2657. A judgment is the final determination of the rights of the parties in action; and a direction of a court or judge, made or entered in writing, and not included in a judgment, is an order. [S. L. 1886, ch. 60, § 317. R. S. O., 5310.]

For and against whom judgment may be rendered.

SEC. 2658. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and by the judgment the court may determine the ultimate rights of the parties on either side, as between themselves, and grant to the defendant any affirmative relief to which he is entitled. [S. L. 1886, ch. 60, § 318. R. S. O., § 5311.]

Against defendants at different times.

SEC. 2659. In an action against several defendants, the court may render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper. [S. L. 1886, ch. 60, § 319. R. S. O., § 5312.]

Dismissal of action for failure to prosecute.

SEC. 2660. The court may dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. [S. L. 1886, ch. 60, § 320. R. S. O., § 5313.]

When action may be dismissed without prejudice.

SEC. 2661. An action may be dismissed without prejudice to a future action:

First—By the plaintiff, before the final submission of the case to the jury, or to the court, when the trial is by the court;

Second—By the court, where the plaintiff fails to appear on the trial;

Third—By the court for the want of necessary parties;

Fourth—By the court, on the application of some of the defandants, where there are others whom the plaintiff fails to prosecute with diligence;

Fifth—By the court for disobedience by the plaintiff of an order concerning the proceedings in the action;

Sixth—By the plaintiff, in vacation, on payment of costs; and the clerk, in such case, shall forthwith make an entry thereof on the journal, whereupon the dismissal shall take effect; but this clause shall not apply to a petition in error, or a case in which a counter-claim or set-off has been filed.

In all other cases the decision must be upon the merits, upon the trial of the action. [S. L. 1886, ch. 60, § 321. R. S. O., § 5314.]

Dismissal not to affect counter-claims, etc.

SEC. 2662. If a set-off or counter-claim be pleaded, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff has dismissed his action or fails to appear. [S. L. 1886, ch. 60, § 322. R. S. O., § 5315.]

Judgment on foreclosure.

SEC. 2663. When a mortgage is foreclosed a sale of the premises shall be ordered; and when the premises to be sold are in one or more tracts, the court may direct the officer who makes the sale to sub-divide, appraise and sell the same in parcels, or to sell any one of the tracts as a whole. [S. L. 1886, ch. 60, § 323. R. S. O., § 5316.]

Procedure when mortgaged property in more than one county.

SEC. 2664. When the mortgaged property is situate in more than one county, the court may order the sheriff or master of each to make sale of the property in his county, or may direct one officer to sell the whole; the court may direct that the property, when it consists of a single tract, be sold as one tract, or in separate parcels, and shall direct whether appraisers shall be selected for each county, or one set for all; and shall also direct whether publication of the sale shall be made in all the counties or in one county only. [C. L. 1886, ch. 60, § 324. R. S. O., § 5317.]

Judgment for conveyance, etc.—Effect.

SEC. 2665. When the party against whom a judgment for a conveyance, release or acquittance is rendered does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available as if the conveyance, release or acquittance had been executed conformably to such judgment. [S. L. 1886, ch. 60, § 325. R. S. O., § 5318.]

Judgments against married women.

SEC. 2666. When a married woman sues or is sued alone, like proceedings shall be had, and judgment may be rendered and enforced, as if she were unmarried, and her separate property and estate shall be liable for the judgment against her; but she shall be entitled to the benefit of all exemptions to heads of families. [S. L. 1886, ch. 60, § 326. R. S. O., § 5319.]

CHAPTER 2.

JUDGMENT UPON FAILURE TO ANSWER, AND BY CONFESSION.

SECTION.
2667. Upon failure to answer—Assessment of damages.
2668. By confession in open court.
2669. Form of judgment by confession.
SECTION.
2670. Enforcement of judgment by confession.
2671. Warrant of attorney to be produced.
2672. Execution of warrant of attorney by person in custody.

Upon failure to answer—Assessment of damages.

SEC. 2667. When all or part of one or more of the causes of action are not put in issue by answer, judgment may be taken, as upon a default, for so much of the plaintiff's demand as is not put in issue by the answer, upon any or all of the causes of action, without prejudice to the rights of the plaintiff as to that portion of his demand disputed; and if, in the determination of any cause, the taking an account, proof of a fact or the assessment of damages is necessary, the court may take the account, hear the proof or assess the damages, or may refer the case to a referee or master for such purpose or direct the matter to be ascertained by a jury, as the case may require. [S. L. 1886, ch. 60, § 327. R. S. O., § 5320.]

By confession in open court.

SEC. 2668. A person indebted or against whom a cause of action exists, may personally appear in a court of competent jurisdiction and with the assent of the creditor or person having such cause of action, confess judgment, whereupon judgment shall be entered accordingly. [S. L. 1886, ch. 60, § 328. R. S. O., § 5321.]

Form of judgment by confession.

SEC. 2669. The debt or cause of action shall be briefly stated in the judgment or in a writing to be filed as pleadings in other actions. [S. L. 1886, ch. 60, § 329. R. S. O., § 5322.]

Enforcement of judgment by confession.

SEC. 2670. Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted, and the confession shall operate as a release of errors. [S. L. 1886, ch. 60, § 330. R. S. O., § 5323.]

Warrant of attorney to be produced.

SEC. 2671. An attorney who confesses judgment in any case shall, at the time of making such confession, produce the warrant of attorney for making the same to the court before which he makes the confession, and the original or a copy of the warrant shall be filed with the clerk of such court. [S. L. 1886, ch. 60, § 331. R. S. O., § 5324.]

Execution of warrant of attorney by person in custody.

SEC. 2672. A warrant of attorney executed by a person in custody to confess judgment in favor of the person at whose suit he is in custody, shall be of no force unless executed in the presence of an attorney expressly named by the person in custody and signed by him as a witness. [S. L. 1886, ch. 60, § 332. R. S. O., § 5325.]

CHAPTER 3.

MANNER OF GIVING AND ENTERING JUDGMENT.

SECTION.
2673. To be entered by clerk upon verdict.
2674. When court to direct judgment.
2675. Judgment *non-obstante veredicto.*
2676. Judgment upon counter-claims, etc.
2677. Rights of infants reserved.
2678. Journal entries.
2679. Complete record necessary unless waived.
SECTION.
2680. When to be made up and signed.
2681. From what complete record made.
2682. Court to cause record to be completed.
2683. When judicial records to be transcribed.
2684. When complete record need not be made.
2685. When record made in dismissed action.
2986. Index to judgments.

To be entered by clerk upon verdict.

SEC. 2673. When a trial by jury has been had, judgment must be entered by the clerk in conformity to the verdict, unless the verdict is special, or the court order the case to be reserved for future argument or consideration. [S. L. 1886, ch. 60, § 333. R. S. O., § 5326.]

When court to direct judgment.

SEC. 2674. When the verdict is special, or when there is a special finding on particular questions of facts, or when the case is reserved, the court shall order what judgment shall be entered. [S. L. 1886, ch. 60, § 334. R. S. O., § 5327.]

Judgment non-obstante veredicto.

Sec. 2675. When, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, although a verdict has been found against such party. [S. L. 1886, ch. 60, § 335. R. S. O., § 5328.]

Judgment upon counter-claim, etc.

Sec. 2676. When a counter-claim or set-off established at the trial exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, when it appears that the defendant is entitled to any affirmative relief, judgment shall be given therefor. [S. L. 1886, ch. 60, § 336. R. S. O., § 5329.]

Rights of infants reserved.

Sec. 2677. It shall not be necessary to reserve in a judgment or order the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment. [S. L. 1886, ch. 60, § 337. R. S. O., § 5330.]

Journal entries.

Sec. 2678. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action. [S. L. 1886, ch. 60, § 338. R. S. O., § 5331.]

Complete record necessary unless waived.

Sec. 2679. The clerk shall make a complete record of every cause as soon as it is finally determined, unless such record, or some part thereof, be duly waived. [S. L. 1886, ch. 60, § 339. R. S. O., § 5332.]

When to be made up and signed.

Sec. 2680. The clerk shall make up such record in each cause in vacation next after the term at which the same was determined; and the presiding judge of the court shall, at the next term thereafter, subscribe the same. [S. L. 1886, ch. 60, § 340. R. S. O., § 5333.]

From what complete record made.

Sec. 2681. The records shall be made up from the petition, the process, the return, pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account, or the copies of papers attached to the pleadings are voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely; and evidence must not be recorded. [S. L. 1886, ch. 60, § 341. R. S. O., §5334.]

Court to cause record to be completed.

Sec. 2682. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct; and when they are made up, and, upon examination, found to be correct, the presiding judge shall subscribe the same. [S. L. 1886, ch. 60, § 342. R. S. O., § 5335.]

When judicial records to be transcribed.

Sec. 2683. A court, when it deems it necessary, may, by order on the journal, direct its clerk to transcribe any book in his office into a new volume, and the transcript so made shall be as valid as the original, and for such services the clerk shall receive six cents for each hundred words copied, to be paid out of the county treasury. [S. L. 1886, ch. 60, § 343. R. S. O., § 5336.]

When complete record need not be made.

SEC. 2684. Section twenty-six hundred and seventy-nine shall not apply:

First—In criminal prosecutions when the indictment has been quashed, or when the prosecuting attorney has enter a *nolle prosequi* on the indictment;

Second—When the action has been dismissed without prejudice to a future action, as provided in section twenty-six hundred sixty-one;

Third—In all actions in which, in open court, at the term at which the final order or judgment is made, both parties declare their agreement that no record shall be made. [S. L. 1886, ch. 60, § 344. R. S. O., § 5337.]

When record made in dismissed action.

SEC. 2685. When an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid therefor by the party requesting it. [S. L. 1886, ch. 60, § 345. R. S. O., § 5338.]

Index to judgments.

SEC. 2686. The clerk shall keep an index, direct and reverse, of all judgments, by names of parties alphabetically arranged, showing in separate columns the name of the judgment debtor, the name of the judgment creditor, the amount of the judgment and the year and term when it was rendered, the page of the journal on which it is entered, the volume and page of the final record, the number of the suit, the number and time of the issue of the execution, and satisfaction thereof, when it appears to have been made. [S. L. 1886, ch. 60, § 346. R. S. O., § 5339.]

CHAPTER 4.

JUDGMENT FOR COSTS, AND ITS ENFORCEMENT.

SECTION.
2687. Security for costs, when required—Cash deposits.
2688. Dismissal of action for failure to give security.
2689. Security required if plaintiff becomes non-resident.
2690. Additional security.
2691. Judgment against surety for costs.
2692. When informer shall pay costs.

SECTION.
2693. Costs when defendant disclaims.
2694. Costs of motions, continuances, etc.
2695. When defendant to pay costs.
2696. When plaintiff shall not recover costs.
2697. Costs against plaintiff.
2698. When costs are in discretion of court.
2699. When several actions brought on same instrument
2700. Fees on summons to another county.

Security for costs, when required—Cash deposit.

SEC. 2687. The plaintiff, if a non-resident of the county in which the action is brought, or a partnership suing by its company name, must furnish sufficient security for costs; the surety must be a resident of the county, and approved by the clerk, and his obligation shall be complete by indorsing the summons, or signing his name on the petition as surety for costs; he shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought, or in any other court to which it may be carried, and for all costs which may be taxed against the plaintiff in such action, whether he obtain judgment or not; but the plaintiff may deposit with the clerk of the court such sum of money, as security for costs in the case, as, in the opinion of the clerk, will be sufficient for the purpose; and the court may, on motion of the defendant, and if satisfied that such deposit is not sufficient, require the same to be increased, or personal security to be given, or the plaintiff may pay all costs as fast as they accrue. [S. L. 1886, ch. 60, § 347. R. S. O., § 5340.]

Dismissal of action for failure to give security.

SEC. 2688. If security for costs be not given in a case mentioned in the preceding section or if the costs be not paid, the court shall, at any time before the commencement of the trial, on motion of the defendant, and notice to the plaintiff, dismiss the action, unless in a reasonable time, which may be allowed by the court, security be given. [S. L. 1886, ch. 60, § 348. R. S. O., § 5341.]

Security required if plaintiff become non-resident.

SEC. 2689. If the plaintiff become a non-resident of the county in which the suit is brought during its pendency, he may be compelled, in the manner stated in the two preceding sections, to give such security. [S. L. 1886, ch. 60, § 349. R. S. O., § 5342.]

Additional security.

SEC. 2690. In an action in which security for costs has been given, the defendant may, at any time before the commencement of the trial, after reasonable notice to the plaintiff, move the court for additional security; and if, on such motion, the court is satisfied that the surety has removed from this territory, or is not sufficient, the action may be dismissed, unless, in a reasonable time, to be fixed by the court, sufficient security be given. [S. L. 1886, ch. 60, § 350. R. S. O., § 5343.]

Judgment against surety for costs.

SEC. 2691. After final judgment in an action in which security for costs has been given, the court may, on motion of the defendant, or a person having a right to such costs, or any part thereof, after ten days notice of such motion, render judgment, in the name of the defendant, or his legal representatives, against the surety for costs, his executors or administrators for the amount of costs adjudged against the plaintiff, or so much thereof as is unpaid; and execution may be issued on such judgment as in other cases, for the use and benefit of the persons entitled to such costs. [S. L. 1886, ch. 60, § 351. R. S. O., § 5344.]

When informer shall pay costs.

SEC. 2692. If an informer, under a penal statute, to whom is given the penalty, or any part thereof, if recovered, dismiss his suit or prosecution, or fail in the same, he shall pay all costs, unless he is an officer whose duty it is to commence the same. [S. L. 1886, ch. 60, § 352. R. S. O., § 5345.]

Costs when defendant disclaims.

SEC. 2693. When a defendant disclaims having title or interest in land or other property, the subject of the action, he shall recover costs, unless for special reasons the court adjudge otherwise. [S. L. 1886, ch. 60, § 353. R. S. O., § 5346.]

Costs of motions, continuances, etc.

SEC. 2694. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid as the court may direct. [S. L. 1886, ch. 60, § 354. R. S. O., § 5347.]

When defendant to pay costs.

SEC. 2695. When it is not otherwise provided by statute, costs shall be allowed, of course, to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only or for the recovery of specific real or personal property. [S. L. 1886, ch. 60, § 355. R. S. O., § 5348.]

When plaintiff shall not recover costs.

SEC. 2696. When the judgment is less than one hundred dollars, unless the recovery be reduced below that sum by counter-claim or set-off, each party shall pay his own costs; and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation or seduction, action for nuisance, or against a justice of the peace for misconduct in office, when the damage assessed is under five dollars, the plaintiff shall not recover costs. [S. L. 1886, ch. 60 § 356. R. S. O., § 5349.]

Costs against plaintiff.

SEC. 2697. Costs shall be allowed, of course, to any defendant, upon a judgment in his favor in the actions mentioned in the two preceding sections. [S. L. 1886, ch. 60, § 357. R. S. O., § 5350.]

When costs are in discretion of court.

SEC. 2698. In other actions the court may award and tax costs, and apportion them between the parties, on the same or adverse sides, as it may adjudge to be right and equitable. [S. L. 1886, ch. 60, § 358. R. S. O., § 5351.]

Where several actions brought on same instrument.

SEC. 2699. When several actions are brought on one instrument in writing, against several parties who might have joined as defendants in the the same action, no costs shall be recovered by the plaintiff in more than one of the actions, if the parties proceeded against in the other action, were at the commencement of the previous action, openly within the territory. [S. L. 1886, ch. 60, § 359. R. S. O., § 5352.]

Fees on summons to another county.

SEC. 2700. When a summons is issued to another county it may be returned by mail, and the sheriff shall be entitled to the same fees as if it had been issued in the county of which he is sheriff. [S. L. 1886, ch. 60, § 360. R. S. O., § 5353.]

CHAPTER 5.

NEW TRIAL AND OTHER RELIEF AFTER JUDGMENT.

SECTION.
2701. Modification of judgment after term.
2702. Opening of judgment on service of publication.
2703. *Bona fide* purchasers not to be affected.
2704. Proceedings to correct mistakes and omissions.
2705. Proceedings to vacate.
2706. Grounds to vacate tried first.

SECTION.
2707. Adjudication which precedes vacation.
2708. Injunction to suspend enforcement of judgment.
2709. Suspension of premature judgment.
2710. Limitations on time for proceeding.
2711. Mistake in not suing for full amount.
2712. Proceedings in supreme and probate courts.

Modification of judgment after term.

SEC. 2701. A district court may vacate or modify its own judgment or order, after the term at which the same was made:

First—By granting a new trial for the cause within the time and in the manner provided in section twenty-six hundred and fifty-six;

Second—By a new trial granted in proceedings against defendants, constructively summoned, as provided in section twenty-four hundred and thirty-five;

Third—For mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment or order;

Fourth—For fraud practiced by the successful party in obtaining a judgment or order;

Fifth—For erroneous proceedings against an infant, married woman or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

Sixth—For the death of one of the parties before the judgment in the action;

Seventh—For unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

Eighth—For errors in a judgment, shown by an infant in twelve months after arriving at full age, as prescribed in section twenty-six hundred and seventy-seven;

Ninth—For taking judgments upon warrants of attorney for more than was due the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment;

Tenth—When such judgment or order was obtained, in whole or in a material part, by false testimony on the part of the successful party, or any witness in his behalf, which ordinary prudence could not have antictpated or guarded against, and the guilty party has been convicted. [S. L. 1886, ch. 60, § 361. R. S. O., § 5354.]

Opening of judgment on service by publication.

SEC. 2702. A party against whom a judgment or order has been rendered without other service than by publication in a newspaper, may, within three years after the date of the judgment or order, have the same opened, and be let in to defend; but before the judgment or order can be opened, the applicant shall give notice to the adverse party of his intention to make his application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court that during the pendency of the action, he had no actual notice thereof in time to appear in court and make his defense; and each party may present affidavits. [S. L. 1886, ch. 60, § 362. R. S. O., § 2355.]

Bona fide purchasers not to be affected.

SEC. 2703. The title to any property which is the subject of the judgment or order sought to be opened, and which by or in consequence of the judgment or order has passed to a purchaser in good faith, shall not be affected by any proceedings under the two preceding sections; nor shall the title to any property sold before judgment under an attachment be affected by said sections. [S. L. 1886, ch. 60, § 363. R. S. O., § 5356.]

Proceedings to correct mistakes and omissions.

SEC. 2704. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action; but the motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term. [S. L. 1886, ch. 60, § 364. R. S. O., § 5357.]

Proceedings to vacate.

SEC. 2705. The proceedings to vacate the judgment or order on the grounds specified in sub-divisions four, five, six, seven, eight, nine and ten of section twenty-seven hundred and one, shall be by petition, verified by affidavit setting forth the judgment or order, the grounds to vacate or modify it, and if the party applying was defendant, the defense to the action, and on such petition a summons shall issue and be served as in the commencement of an action. [S. L 1886, ch. 60, § 365. R. S. O., § 5358.]

Grounds to vacate tried first.

SEC. 2706. The court must first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action. [S. L. 1886, ch. 60, § 366. R. S. O., § 5359.]

Adjudication which preceeds vacation.

SEC. 2707. A judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment was rendered; or if the plaintiff seeks its vacation, that there is a valid cause of action; and when a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. [S. L. 1886, ch. 60, § 367. R. S. O., § 5360.]

Injunction to suspend enforcement of judgment.

SEC. 2708. The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or a part thereof, which injunction may be granted by the court or any judge thereof when it is rendered probable by affidavit or by exhibition of the record that the party is entitled to have such judgment or order vacated or modified. [S. L. 1886, ch. 60, § 368. R. S. O., § 5361.]

Suspension of premature judgment.

SEC. 2709. If the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the preceding section, although no valid defense to the action be shown, and the court shall make such orders concerning the executions to be issued on the judgment as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time. [S. L. 1886, ch. 60, § 369. R. S. O., § 5362.]

Limitations on time for proceeding.

SEC. 2710. Proceedings to vacate or modify a judgment or order for the causes mentioned in sub-divisions four, five and seven of section twenty-seven hundred and one, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto is an infant or a person of unsound mind, and in cases of such disability, within two years after the removal thereof; proceedings for the causes mentioned in sub-divisions three and six of the same section shall be commenced within three years, and in sub-division nine within two years after the defendant has notice of the judgment; and under sub-division ten of said section the proceedings may be commenced after the guilty party is convicted, if the conviction be within two years from the rendition of the judgment. [S. L. 1886, ch. 60, § 370. R. S. O., § 5363.]

Mistake in not suing for full amount.

SEC. 2711. When by mistake of the pleader the amount claimed in the pleading, and recovered, in less than the true amount then due, the party injured by the mistake may recover the balance by civil action, without costs. [S. L. 1886, ch. 60, § 371. R. S. O., § 5364.]

Proceedings in supreme and probate courts.

SEC. 2712. The provisions of this chapter shall apply to the supreme court and probate courts, so far as the same may be applicable to their judgments or final orders; and in estimating time a term of the probate court shall, for this purpose, be considered as continuing until the commencement of the succeeding term. [S. L. 1886, ch. 60, § 372. R. S. O., § 5365.]

CHAPTER 6.

REVIVOR OF AND NEW PARTIES TO JUDGMENT.

SECTION.
2713. Proceedings against parties not summoned or unknown.
2714. Revivor of dormant judgments.
2715. Limitation on time for proceeding.
SECTION.
2716. Revivor when parties die after judgment.
2717. Judgment against partnership.
2718. Sureties in certain bonds.

Proceedings against parties not summoned, or unknown.

SEC. 2713. When judgment is rendered in this territory on a joint contract or instrument, parties to the action who were not summoned, and persons whose liability was not known to the plaintiff at the rendition of the judgment, may be made parties thereto by action in the same court, if they can be summoned in the territory; or, when the judgment is rendered elsewhere, the plaintiff may bring suit upon such contract or instrument against the parties not summoned, or persons whose liability was unknown, in any county where any such parties reside or may be summoned. [S. L. 1886, ch. 60, § 374. R. S. O., § 5366.]

Revivor of dormant judgments.

SEC. 2714. When a judgment, including judgments rendered by a justice of the peace, a transcript of which has been filed in the district court for execution, becomes dormant, it may be revived in the same manner as prescribed for reviving actions before judgment, or by action; when either party to such dormant judgment, his agent or attorney, makes affidavit showing that the adverse party is a non-resident of the territory, and that such judgment remains unsatisfied, in whole or in part, and the amount owing thereon, service may be made by publication as in other cases; if sufficient cause be not shown to the contrary, the judgment shall stand revived for the amount which the court finds to be due and unsatisfied thereon; and the lien of the judgment for the amount due shall be revived, and shall operate from the time of the entry of the conditional order, or the filing of the petition. [S. L. 1886, ch. 60, § 374. R. S. O., § 5367.]

Limitation on time for proceeding.

SEC. 2715. No action shall be brought to revive a judgment after twenty-one years after it becomes dormant, unless the party entitled to bring such action was, at the time the judgment became dormant, within the age of twenty-one years, insane or imprisoned, in which cases the action may be brought within fifteen years after the disability has ceased. [S. L. 1886, ch. 60, § 375. R. S. O., § 5368.]

Revivor when parties die after judgment.

SEC. 2716. If either or both of the parties die after judgment, and before satisfaction thereof, their representatives real or personal, or both, as the case may require, may be made parties to the judgment, in the same manner as is prescribed for the revival of actions before judgment; and such judgment may be rendered and execution awarded, as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased parties. [S. L. 1886, ch. 60, § 376. R. S. O., § 5369.]

Judgment against partnership.

SEC. 2717. The members of a partnership, against which a judgment has been rendered by its firm name, may be made parties to the judgment by action. [S. L. 1886, ch. 60, § 377. R. S. O., § 5370.]

Sureties in certain bonds.

SEC. 2718. Sureties to the bond of an executor, administrator, guardian or trustee, may be made parties to a judgment thereon against the principal, by action. [S. L. 1886, ch. 60, § 378. R. S. O., § 5371.]

DIVISION 5. ENFORCEMENT OF JUDGMENT.

CHAPTER 1. EXECUTION.
CHAPTER 2. PROCEEDINGS IN AID OF EXECUTION.

CHAPTER 1.

EXECUTION.

SUB-DIVISION 1. KINDS OF EXECUTION.
SUB-DIVISION 2. EXECUTION AGAINST PROPERTY.
SUB-DIVISION 3. MANNER OF SUBJECTING CORPORATE STOCK TO EXECUTION AND ATTACHMENT.
SUB-DIVISION 4. EXEMPTION FROM EXECUTION.
SUB-DIVISION 5. PROCEDURE WHEN CHATTELS CLAIMED BY THIRD PERSON.
SUB-DIVISION 6. EXECUTION AGAINST THE PERSON.
SUB-DIVISION 7. PRIVILEGE FROM ARREST—PRISON BOUNDS.

SUB-DIVISION 1. KINDS OF EXECUTION.

SECTION.
2719. Executions, how issued and directed.
SECTION.
2720. Executions classified.

Executions, how issued and directed.

SEC. 2719. An execution is a process of the court, issued by the clerk and directed to the sheriff of the county; and executions may be issued to the sheriffs of different counties at the same time. [S. L. 1886, ch. 60, § 379. R. S. O., § 5372.]

Executions classified.

SEC. 2720. Executions are of three kinds:

First—Against the property of the judgment debtor, including orders of sale;

Second—Against the person of the judgment debtor;

Third—For the delivery of the possession of real property; in which case the writ shall contain a specific description of the property, and a command to the sheriff to deliver the property to the person entitled thereto; and the writ may also require him to make the damages recovered for withholding the possession, and costs, or costs alone, out of the property of the person who so withholds the possession. [S. L. 1886, ch. 60, § 380. R. S. O., § 5373.]

SUB-DIVISION 2. EXECUTION AGAINST PROPERTY.

SECTION.
2721. Property subject to levy and sale.
2722. When lien of judgment attaches to property.
2723. Lien of judgment of supreme court.
2724. Filing transcript of judgment before justice.
2725. Lien of justice's judgments.
2726. Execution upon justice's judgments.
2727. When judgment becomes dormant.
2728. The command and indorsement of executions.
2729. When no preference given to executions.
2730. Order in which property shall be taken.
2731. Bond to officer for delivery of goods.
2732. Notice of sale of goods on execution.
2733. Alias writs against unsold goods.
2734. Public and private sale of goods.
2735. Additional levy.
2736. Appraisement of realty.
2737. Copy of appraisement to be filed—Sale.
2738. Effect of appraisement on lien—Restrictions on sale.
2739. Property of officers to be sold without valuation.
2740. Notice of the sale of realty.
2741. Return on execution and record thereof.
2742. Duty of sheriff when money made without sale of realty.
2743. Purchaser failing to pay, punished for contempt.
2744. Confirmation of sale—Order for deed—Payment of proceeds.
2745. Conveyances by master commissioner.

SECTION.
2746. Oaths—Sheriff may act as commissioner.
2747. Deed of officer—Recitals, etc.
2748. Effect of deed of officer.
2749. Printer's fees may be required in advance.
2750. Place of sale—Who can buy.
2751. Alias executions against lands.
2752. Separate levies on separate parcels of land
2753. Succeeding officer may make deed.
2754. Surplus to be paid to defendant.
2755. Reversal not to affect sale—Restitution.
2756. Invalid sale—Remedy of purchaser.
2757. Last section applicable to other sales.
2758. Sale of wrong property—Vacating satisfaction.
2759. Relief of officer who levies on wrong property.
2760. Right of co-defendant on sale of wrong property.
2761. When judgment loses preference.
2762. New appraisement for sale on execution.
2763. New appraisement and terms for sale on decree.
2764. Return of execution.
2765. Form of judgment against principal and surety—Execution.
2766. Appraisers' fees.
2767. Execution to another county may be returned by mail.
2768. Money not to be forwarded by mail.
2769. Execution docket.
2770. Index to execution docket.
2771. Order of sale issued when case not on trial docket.

Property subject to levy and sale.

SEC. 2721. Lands and tenements including vested interests therein, and permanent leasehold estates, renewable forever, and goods and chattels, not exempt by law, shall be subject to the payment of debts, and shall be liable to be taken on execution, and sold as hereinafter provided. [S. L. 1886, ch. 60, § 381. R. S. O., § 5374.]

When lien of judgment attaches to property.

SEC. 2722. Such lands and tenements, within the county where the judgment is entered, shall be bound for the satisfaction thereof from the first day of the term at which judgment is rendered; but judgments by confession, and judgment rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered; and all other lands, as well as goods and chattels of the debtor, shall be bound from the time they are seized in execution. [S. L. 1886, ch. 60, § 382. R. S. O., § 5375.]

Lien of judgment of supreme court.

SEC. 2723. A judgment of the supreme court for money shall bind the lands and tenements of the debtor, within the county in which the suit originated, from the first day of the term at which judgment is entered, and all other lands, and the goods and chattels of the debtor, from the time they are seized in execution; but the lien of a judgment of the district court, in an action which is appealed by the judgment debtor to the supreme court, shall not be thereby divested or vacated, but shall continue until the final determination of the action in the supreme court. [S. L. 1886, ch. 60, § 383. R. S. O., § 5376.]

Filing transcript of judgment before justice.

SEC. 2724. The party in whose favor a judgment is rendered by a justice of the peace, may at any time after the day the judgment is rendered, if the same be not appealed or stayed, file in the office of the clerk of the district court of the county in which the judgment was rendered, a transcript thereof, having certified therein the amount, if any, paid thereon; and thereupon the clerk shall enter the case on the execution docket, together with the amount of the judgment, and the time of filing the transcript; but, if, within ten days after the rendition of the judgment, the judgment debtor pay the same, or give bail for stay of execution, the justice shall forthwith certify that fact to the clerk of the district court, who shall enter a memorandum thereof upon the execution docket; and the cost of the transcript, the filing thereof, and of the entry on the docket shall be paid by the party who files the transcript, and not be taxed to the other party. [S. L. 1886, ch. 60, § 384. R. S. O., § 5377.]

Lien of justice's judgments.

SEC. 2725. Such judgment, if the transcript be filed in term time, shall be a lien on the real estate of the judgment debtor within the county from the day the transcript is filed; and if filed in vacation the judgment shall, as against the debtor, be a lien from the day it is filed, but as against other transcripts filed in vacation, and judgments rendered at the next term of the court, it shall be a lien only from the first day of the next term. [S. L. 1886, ch. 60, § 385. R. S. O., § 5378.]

Execution upon justice's judgments.

SEC. 2726. Execution may be issued upon such judgment at any time after filing the transcript, as if the judgment had been rendered in court; but the lien shall remain as provided in the preceding section. [S. L. 1886, ch. 60, § 386. R. S. O., § 5379.]

When judgment becomes dormant.

SEC. 2727. If execution on a judgment rendered in any court of record in this territory, or a transcript of which has been filed as provided in section twenty-seven hundred and twenty-four, be not sued out within five years from the date of the judgment, or if five years intervene between the date of the last execution issued on such judgment and the time of suing out another execution thereon, such judgment shall become dormant and shall cease to operate as a lien on the estate of the judgment debtor. [S. L. 1886, ch. 60, § 387. R. S. O., § 5380.]

The command and endorsement of executions.

SEC. 2728. The writ of execution against the property of the judgment debtor, issuing from any court of record, shall command the officer to whom it is directed that of the goods and chattels of the debtor he cause to be made the money specified in the writ, and, for want of goods and chattels, that he cause the same to be made of the lands and tenements of the debtor; but an execution issued on a judgment rendered against the partnership by its firm name, shall operate only on the partnership property; and the exact amount of the debt, damages and costs for which the judgment is entered shall be endorsed on the execution. [S. L. 1886, ch. 60, 388. R. S. O., § 5381.]

When no preference given to executions.

SEC. 2729. When two or more writs of execution against the same debtor are sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor are delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands; in all other cases the writ of execution first delivered to the officer shall be first satisfied; and the officer shall indorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to affect any preferable lien which a judgment on which execution issued has on the lands of the judgment debtor. [S. L. 1886, p. 60, § 389. R. S. S. O., § 5382.]

Order in which property shall be taken.

SEC. 2730. The officer to whom a writ of execution is delivered shall proceed, immediately, to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall indorse on the execution the words "no goods," and forthwith levy the same upon the lands and tenements of the debtor which are liable to satisfy the judgment. [S. L. 1886, ch. 60, § 390. R. S. O., § 5383.]

Bond to officer for delivery of goods.

SEC. 2731. When a sheriff, coroner, or other officer levies, by virtue of an execution upon any goods and chattels which afterwards remain upon his hands unsold for the want of bidders, for the want of time to advertise and sell, or for any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security in such sum as he deems sufficient, to the effect that the property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by such officer, either by notice given in writing to the defendant in execution, or by advertisement printed in a newspaper published in the county, naming therein the day and place of sale; and if the defendant fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution the full value of such goods and chattels, or the amount of the debt and costs, the undertaking shall be considered as broken, and may be proceeded on as in other cases. [S. L. 1886, ch. 60, § 391. R. S. O., § 5384.]

Notice of sale of goods on execution.

SEC. 2732. The officer who levies upon goods and chattels by virtue of an execution issued by a court of record, shall, before he proceeds to sell the same, cause public notice to be given of the time and place of sale, for at least ten days before the day of sale, which notice shall be given by advertisement printed in a newspaper published in the county, or, if no newspaper is published therein, by posting advertisements in five public places in the county, two of which shall be put up in the precinct where the sale is to be held. [S. L. 1886, ch. 60, § 392. R. S. O., § 5385.]

Alias writs against unsold goods.

SEC. 2733. When goods and chattels levied upon by execution cannot be sold for want of bidders, or want of time, the officer who makes the return shall annex to the execution a true and perfect inventory of the goods and chattels remaining unsold; and the plaintiff in such execution may thereupon have another execution issued, directing the sale of the property levied upon; but such goods and chattels shall not be sold unless the time and place of sale be advertised as directed in the last preceding section. [S. L. 1886, ch. 60, § 393. R. S. O., § 5386.]

Public and private sale of goods.

SEC. 2734. All sales of goods and chattels shall be at public auction; but the court from which an execution or order of sale issues, or a judge thereof in vacation may, on good cause shown, on application of either party, and due notice to the adverse party, make an order directing the sheriff, or other officer holding the process, to sell such goods and chattels at private sale for cash, specifying the time, not extending beyond the return day of the process, during which such sale will continue; but before such private sale is made, the court shall order such personal property to be appraised by three disinterested persons; and the property shall not be sold for less than two-thirds of the appraised value thereof. [S. L. 1886, ch. 60, § 394. R. S. O., § 5387].

Additional levy.

SEC. 2735. When a writ is issued directing the sale of property previously taken in execution, the officer who issues the writ shall, if requested by the person entitled to the benefit thereof, or his agent or attorney, add thereto a command to the officer to whom the writ is directed, that if, in his opinion, the property remaining in his hands not sold is insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, of the judgment debtor, as the law permits, sufficient to satisfy the debt. [S. L. 1886, ch. 60, § 395. R. S. O., § 5388.]

Appraisement of realty.

SEC. 2736. When execution is levied upon lands and tenements, the officer who makes the levy shall call an inquest of three disinterested freeholders, who shall be residents of the county where the lands taken in execution are situate, and administer to them an oath impartially to appraise the property so levied upon, upon actual view; and such freeholders shall forthwith return to such officer, under their hands, an estimate of the real value of the property in money. [S. L. 1886, ch. 60, § 396. R. S. O., § 5389.]

Copy of appraisement to be filed—Sale.

SEC. 2737. When the officer receives the return he shall forthwith deposit a copy thereof with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this chapter. [S. L. 1884, ch. 60, § 397. R. S. O., § 5390.]

Effect of appraisement on lien—Restrictions on sale.

SEC. 2738. If, upon such return, it appear by the inquisition that one-half of the appraised value of the lands and tenements so levied upon is sufficient to satisfy the execution with costs, the judgment upon which the execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no tract of land shall be sold for less than one-half of the value returned in the inquest; and nothing in this section contained shall affect the sale of lands by the territory; but all lands, the property of individuals indebted to the territory for any debt or taxes, or in any other manner, except for loans heretofore authorized by the legislature, shall be sold without valuation for the discharge of such debt or taxes, agreeably to the laws for such case made and provided. [S. L. 1886, ch. 60, § 398. R. S. O., § 5391.]

Property of officers to be sold without valuation.

SEC. 2739. If the property of a clerk, sheriff, coroner, justice of the peace or constable, or of a collector of territorial, county, municipal, corporation or precinct tax, be levied on, for or on account of any money by him collected or received in his official capacity, the property so levied on shall be sold without valuation. [S. L. 1886, ch. 60, § 399. R. S. O., 5392.]

Notice of the sale of realty.

SEC. 2740. Lands and tenements taken in execution shall not be sold until the officer causes to be given public notice of the time and place of sale for at least thirty days before the day of sale by advertisement in a newspaper published and of general circulation in the county, or if no newspaper is published in the county, in a newspaper of general circulation therein and by putting up an advertisement of the same upon the court house door and in five other public places in the county, two of which shall be in the precinct where the lands and tenements are situate; when the advertisement is made in a newspaper published weekly, it shall be sufficient to insert it in five consecutive numbers thereof, but if there is published both a daily and weekly edition of the newspaper selected for such advertisement and the circulation of the daily in the county exceeds that of the weekly, or if the lands and tenements taken in execution are situate in any city in this territory and there is published both a daily and weekly edition of a newspaper selected for such advertisement, and the circulation of the daily in such city exceeds that of the weekly, it shall be sufficient to publish the advertisement in the daily once a week for five consecutive weeks before the day of sale, each insertion to be on the same day of the week; but the expense of such publication in a daily newspaper shall not exceed the cost of publishing the same in a weekly newspaper, and all sales made without such advertisement shall be set aside, on motion, by the court to which the execution is returnable. [S. L. 1886, ch. 60, § 400. R. S. O., § 5393.]

Return on execution, and record thereof.

SEC. 2741. The sheriff shall indorse on the writ his proceedings thereon and the clerk shall immediately, upon return thereof, record at length in the execution docket or other docket provided for the purpose, all such indorsements, and the record shall be held to be a part of the record of the court. [S. L. 1886, ch. 60, § 401. R. S. O., § 5395.]

Duty of sheriff when money made without sale of realty.

SEC. 2742. If the sheriff collect any part of a judgment by virtue of an execution without the sale of real estate, he shall pay the same to the judgment creditor or his attorney, upon demand made therefor at his office, and if the execution be fully satisfied he shall return it within three days after he has collected the money thereon. [S. L. 1886, ch. 60, § 402. R. S. O., § 5396.]

Purchaser failing to pay punished for contempt.

SEC. 2743. The court from which any execution or order of sale issues shall, upon notice and motion of the officer who makes the sale or of an interested party, punish as for contempt any purchaser of real property who wilfully fails to pay the purchase money therefor. [S. L. 1886, ch. 60, § 403. R. S. O., § 5397.]

Confirmation of sale—Order for deed—Payment of proceeds.

SEC. 2744. If, upon the return of any writ of execution, for the satisfaction of which lands and tenements have been sold, it be found by the court, on careful examination of the proceedings of the officer, that the sale has been made in all respects in conformity to the provisions of this title, the clerk shall be directed to make an entry on the journal that the court is satisfied of the legality of such sale, and that the officer make to the purchaser a deed for the lands and tenements; and the officer, on making the sale, may retain the purchase money in his hands until the court examines his proceedings, when he shall pay the same to the person entitled thereto, agreeably to the order of the court. [S. L. 1886, ch. 60, § 404. R. S. O., § 5398.]

Conveyances by master commissioner.

SEC. 2745. Real property may be conveyed by a master commissioner:

First—When by an order or judgment, in an action or proceeding, a party is ordered to convey such property to another, and he neglects or refuses to comply with the order or judgment, and the master is directed to convey on failure of the party to comply with the order;

Second—When specific real property is sold by a master under an order or a judgment of the court. [S. L. 1886, ch. 60, § 405. R. S. O., § 5399.]

Oaths—Sheriff may act as commissioner.

SEC. 2746. A master commissioner or special master who sells real property shall have the same power to administer oaths that is conferred upon the sheriff; a sheriff may act as a master commissioner, and shall also, on notice, and for reasonable compensation to be paid by the master commissioner out of his fees, attend and make sale for any such commissioner who, by reason of sickness, is unable to attend; and sales made by a master shall conform in all respects to the laws regulating sales of lands upon execution. [S. L. 1886, ch. 60, § 406. R. S. O., § 5400.]

Deed of officer—Recitals, etc.

SEC. 2747. An officer, including a master commissioner and a special master, who sells real property, shall on confirmation of the sale, make to the purchaser a deed, which shall contain the names of the parties to the judgment, the date and amount of the judgment, the substance of the execution or order on which the property was sold, the substance of the officer's return thereon, and the order of confirmation; and the deed shall be executed, acknowledged and recorded as is provided with respect to other deeds. [S. L. 1886, ch. 60, § 407. R. S. O., § 5401.]

Effect of deed of officer.

SEC. 2748. The deed shall be *prima facie* evidence of the legality and regularity of the sale; and all the estate and interest of the person whose property the officer so professed to sell and convey, whether that interest existed at the time the property became liable to satisfy the judgment, or was acquired subsequently, shall be thereby vested in the purchaser. [S. L. 1886, ch. 60, § 408. R. S. O., § 5402.]

Printer's fees may be required in advance.

SEC. 2749. The officer who makes a levy, or holds an order of sale, may, before giving notice of the sale, demand of the plaintiff, his agent or attorney, the fees of the printer for publishing such notice; and in such case the officer shall not be required to make such publication until the fees are paid. [S. L. 1886, ch. 60, § 409. R. S. O., § 5403.]

Place of sale—Who can buy.

SEC. 2750. All sales of land or tenements under execution or order of sale shall be held in the county in which such lands and tenements are situate, and at the court house unless otherwise ordered by the court; and purchases of real or personal property, by the officer making sale thereof, or by an appraiser of such property, shall be considered fraudulent and void. [S. L. 1886, ch. 60, § 410. R. S. O., § 5404.]

Alias executions against lands.

SEC. 2751. If lands and tenements levied on, or ordered to be sold, be not sold upon one execution, other executions may be issued to sell the same [S. L. 1886, ch. 60, § 411. R. S. O., § 5405.]

Separate levies on separate parcels of land.

SEC. 2752. When two or more executions come to the hands of an officer, and it is necessary to levy on real estate to satisfy the same, and either of the judgment creditors, or his assignee, requires the officer to make a separate levy to satisfy his execution or executions, the officer shall obey the direction; but the officer who makes the levy on behalf of the creditor whose execution may, by the provisions of this chapter, be entitled to a preference, shall have the choice of such part of the real property of the judgment debtor or debtors as will be sufficient, at one-half of the appraised value, to satisfy the same; when two or more executions, which are entitled to no preference as to each other, are put in the hands of the same officer, he shall, when required, levy the same on separate parcels of the real property of the judgment debtor or debtors, if in the opinion of the appraisers the same may be divided without material injury; and if the real property of such debtor or debtors be not sufficient, at one-half of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due on the execution bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel. [S. L. 1886, ch. 60, § 412. R. S. O., § 5406.]

Succeeding officer may make deed.

SEC. 2753. If the term of service of the officer who makes sale of any lands and tenements expires, or if such officer die, be absent, or unable from any cause to make a deed of conveyance of the property sold, any successor of such officer, on receiving a certificate from the court from which execution issued for the sale of the lands and tenements, signed by the clerk, by order of the court, setting forth that sufficient proof has been made that the sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof has been paid, then, on proof of such payment, and tender of the balance, if any, may execute to the purchaser, or his legal representative, a deed of conveyance of the lands and tenements sold; and such deed shall be as good and as valid in law, and have the same effect, as if the officer who made the sale had executed the same. [S. L. 1886, ch. 60. § 413. R. S. O., § 5407.]

Surplus to be paid to defendants.

SEC. 2754. When, on any sale made as aforesaid, there is in the hands of the officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the officer shall, on demand, pay the balance to the defendant in execution, or his legal representatives. [S. L. 1886, ch. 60, § 414. R. S. O., § 5408.]

Reversal not to affect sale—Restitution.

SEC. 2755. If a judgment, in satifaction of which lands or tenements are sold, be thereafter reversed, such reversal shall not defeat or affect the title of the purchaser; but in such case restitution shall be made by the judgment creditor of the money for which such lands or tenements were sold, with lawful interest from the day of sale. [S. L. 1886 ch. 60, § 415. R. S. O., § 5409.]

Invalid sale Remedy of purchaser.

SEC. 2756. If, upon the sale of property on execution the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the right of the creditor against the debtor, to the extent of the money paid and applied to the debtor's benefit, and to the same extent shall have a lien on the property sold, as against all persons, except *bona fide* purchasers without notice; but this section shall not be construed to require the creditor to refund the purchase money, by reason of the invalidity of any such sales. [S. L. 1886, ch. 60, § 416. R. S. O., § 5410.]

Last section applicable to other sales.

SEC. 2757. The last section shall apply, also, to all sales by order of court, sales by executors, administrators, guardians and assignees, and to all sales for taxes. [S. L. 1886, ch. 60, § 417. R. S. O., § 5411.]

Sale of wrong property—Vacating satisfaction.

SEC. 2758. When a plaintiff in execution, or his agent, has, in good faith, ordered a levy of execution upon property not subject thereto, and the same has been sold and applied on his judgment, and a recovery therefor has been had against him by the owner of the property, the person so recovered against, and having paid the amount so recovered, may, on motion in the court having control of the judgment, upon giving the judgment defendant notice of such motion, of the satisfaction so made from the sale of the property on execution, vacated and shall be entitled to collect the judgment. [S. L. 1886, ch. 60, § 34. R. S. O., § 5412.]

Relief of officer who levies on wrong property.

SEC. 2759. When an officer to whom an execution has been issued upon a judgment levies the execution in good faith, upon property not subject thereto, and sells the same, and applies the proceeds in satisfaction or part satisfaction, of the judgment, and a recovery is had against him for its value, the officer, upon payment of such value, and, on motion before the court having control of the judgment, and a showing to the court that due notice of such motion has been given to the defendant named in the execution, may have the satisfaction of such judgment, so made from the sale of such property, vacated, and execution shall isue therefor for the use of such officer, the same as if such levy and sale had not been made. [S. L. 1886, ch. 60, § 419. R. S. O., § 5413.]

Right of co-defendant on sale of wrong property.

SEC. 2760. When a defendant in a judgment, or a surety or co-surety of such defendant, has, by mistake, directed an execution issued on the judgment to be levied on property not liable to such execution, and thereby cause such judgment to be wholly or in part satisfied, and has been compelled to pay the owner of such property therefor, he shall be adjudged to have the same rights against any co-defendant in such judgment, and against any co-surety or principal in respect of the debts on which such judgment is founded, as though such satisfaction had, by due process of law, been made out of the property of such defendant, surety or co-surety, so directing such levy. [S. L. 1886, ch. 60, §420. R. S. O., § 5414.]

When judgment loses preference.

SEC. 2761. No judgment, on which execution is not issued and levied before the expiration of one year next after its rendition, shall operate as a lien on the estate of a debtor to the prejudice of any other *bona fide* judgment creditor; but in all cases in which judgment is rendered in the district or supreme court, and a special mandate is awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for one year after the first day of the term of the district court to which such mandate is directed, or, if the mandate be entered on the journal in vacation, after it is so entered; and in computing such period of one year, the time covered by an appeal of the case, or by an injunction against the execution, or by proceedings in error, or by a vacancy in the office of the sheriff, coroner, or by the inability of such officer, shall be excluded. [S. L. 1886, ch. 60, § 421. R. S. O., § 5415.]

New appraisement for sale on execution.

SEC. 2762. When real estate, taken on execution and appraised, and twice advertised and offered for sale, remains unsold for want of bidders, the court from which the execution issued shall, on motion of the plaintiff, set aside such appraisement, and order a new appraisement to be made, or set aside such levy and appraisement, and award a new execution to issue, as the case may require; and when such real estate, or any part thereof, has been three times appraised as aforesaid, and thereafter twice advertised and offered for sale, and then remains unsold for want of bidders, the court may direct the amount for which the same shall be sold. [S. L. 1886, ch. 60, § 422. R. S. O., § 5416.]

New appraisement and terms for sale on decree.

SEC. 2763. When premises are ordered to be sold, and having been twice advertised and offered for sale, remain unsold for want of bidders, the court from which the order of sale issued, shall, on motion of the plaintiff or defendant, order a new appraisement, and may also order that the land be sold on time, as follows: One-third cash in hand, one-third in nine months from the day of sale, and the remaining third in eighteen months from the day of sale, the deferred payments to draw interest, and to be secured by a mortgage on the premises. [S. L. 1886, ch. 60, § 423. R. S. O., § 5417.]

Return of execution.

SEC. 2764. The officer to whom a writ of execution is directed shall return such writ to the court to which it is returnable within sixty days from the date thereof. [S. L. 1886, ch. 60, § 424. R. S. O., § 5418.]

Form of judgment against principal and surety—Execution.

SEC. 2765. When judgment is rendered in a court of record within this territory, upon an instrument of writing, in which two or more persons are jointly or severally bound, and it is made to appear to the court by parol or other testimony, that one or more of the persons so bound signed the same as surety or bail for his or their co-defendant, the clerk of such court, in recording the judgment thereon, shall certify which of the defendants is principal debtor, and which surety or bail; the clerk shall issue execution on such judgment, commanding the officer to cause money to be made of the goods and chattels, lands and tenements of the principal debtor, or for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail; and the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution. [S. L. 1886, ch. 60, § 425. R. S. O., § 5419.]

Appraisers' fees.

SEC. 2766. Each appraiser of real estate under the provisions of this chapter shall receive three dollars per day and one dollar and fifty cents for half days for his services, to be collected on the execution by virtue of which the property appraised was levied on. [S. L. 1886, ch. 60, § 426.]

Execution to another county may be returned by mail.

SEC. 2767. When execution is issued in any county and directed to the sheriff or coroner of another county, the sheriff or coroner having the execution may, after having discharged all the duties required of him by law, transmit such execution by mail to the clerk of the court who issued it, and on proof made by such sheriff or coroner that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, he shall not be liable for any amercement or penalty if it does not reach the office in due time. [S. L. 1886, ch. 60, § 427. R. S. O., § 5421.]

Money not to be forwarded by mail.

SEC. 2768. No sheriff or coroner shall forward by mail any money made on such execution unless he be specially instructed to do so by the plaintiff, his agent or attorney of record. [S. L. 1886, ch. 60, § 428. R. S. O., § 5422.]

Execution docket.

SEC. 2769. The clerk of the district court shall enter upon the execution docket the names, in full, of the parties to the cause in which an execution is issued, the number of the cause upon the appearance docket, the number of the execution, the date of its issue, the amount of the judgment, the costs due each person or officer, the time when the judgment was rendered and the date of the return, and the return shall be recorded therein in full. [S. L. 1886, ch. 60, § 429. R. S. O., § 5423.]

Index to execution docket.

SEC. 2770. The clerk shall keep an index to the execution docket, showing in separate columns the names of all parties against whom and in whose favor an execution has been issued, the number of the execution and the number of the cause upon the appearance docket. [S. L. 1886, ch. 60, § 430. R. S. O., § 5424.]

Order of sale issued when case not on trial docket.

SEC. 2771. When an order of sale is issued in a case not on the trial docket, the clerk shall enter it on the execution docket and enter the subsequent proceedings had in pursuance thereof, in the same manner that executions and proceedings thereon are entered; when a sale of real estate is made in pursuance of such order, it shall be confirmed in all respects as sales on executions are confirmed, and after the sale the officer shall be governed in all respects by the law relating to sales on execution. [S. L. 188, ch. 60, § 431. R. S. O., § 5425.]

SUB-DIVISION 3. MANNER OF SUBJECTING CORPORATE STOCK TO EXECUTION AND ATTACHMENT.

SECTION.
2772. Shares of stock subject to levy.
2773. Officer may demand statement of shares held by defendant.
2774. Manner of making levy.
2775. Sale of shares.
2776. Certificate of sale—Transfer on books of company.

SECTION.
2777. Rights and privileges of purchasers.
2778. Shares bound from time of levy.
2779. Pledge of shares as collateral not affected by levy.

Shares of stock subject to levy.

SEC. 2772. Rights and shares of stock in any incorporated companies owned or held by any defendant in execution or attachment, or by any person in trust for or to the use of any defendant in execution or attachment, may be levied upon under any execution or writ of attachment, and may be sold under any execution in the manner hereinafter provided. [S. L. 1882, ch. 80, § 1. S. L. 1886, ch. 60, § 464.]

Officer may demand statement of shares held by defendant.

SEC. 2773. When any execution or writ of attachment shall be issued against any person being the owner of any shares or stock in any incorporated company or for whom or to whose use any shares or stock in any incorporated company are held by any person other than such defendant, it shall be the duty of the president, cashier, secretary or chief clerk of such incorporated company, or if there be no such officers in the territory, then any other officer of such company or the resident manager or agent thereof, upon the request of the officer having such execution or writ of attachment, to furnish him a certificate under his hand, stating the number of rights or shares which the defendant holds, or which are held in trust for such defendant, or to his use, in the stock of such incorporated company. [S. L. 1882, ch. 80, § 2. S. L. 1886, ch. 60, § 464.]

Manner of making levy.

SEC. 2774. Any officer, upon obtaining information in the manner provided in the last section or otherwise, that a defendant in any execution or writ of attachment held by him owns or holds any rights or shares in the stock of any incorporated company, or that such rights or shares are owned or held by any other person in trust for or to the use of such defendant, may make a levy of such execution or writ of attachment on such rights or shares by leaving a true copy of such writ with the president, secretary, cashier or chief clerk of such incorporated company, and if there be no such officer there, with some other officer of such incorporated company, or the resident manager or agent thereof, with a certificate of the officer making such levy, setting forth that he levies upon and takes in execution or attachment such rights or shares to satisfy such execution or attachment. [S. L. 1882, ch. 80, § 3. S. L. 1886, ch. 60, § 464.]

Sale of shares.

SEC. 2775. Rights or shares in the stock of any incorporated company levied upon by virtue of any writ of attachment shall be held subject to the judgment rendered in the action in which such writ is issued, and whenever any execution shall be levied upon such rights or shares, the same shall be sold in like manner as personal property is by existing law provided to be sold, said sale to be made at the front door of the court house, in the county in which such levy is made. [S. L. 1882, ch. 80, § 4. S. L. 1886, ch. 60, § 464.]

Certificate of sale—Transfer on books of company.

SEC. 2776. It shall be the duty of every officer who shall sell any rights or shares of stock in any incorporated company under an execution to execute to the purchaser thereof a certificate in writing, reciting the sale and payment of the consideration and conveying to the purchaser such rights and shares, and such officer shall also leave with the president, secretary, cashier or chief clerk, or if there be none, with any other officer of such incorporated company a true copy of such certificate; and thereupon it shall be the duty of the officer or clerk or other person having charge of the books of such incorporated company to make such entries in the books of such company as may be necessary to vest the legal and equitable title to such rights or shares of stock in the purchaser of the same. [S. L. 1882, ch. 80, § 5. S. L. 1886, ch. 60, § 464.]

Rights and privileges of purchasers.

SEC. 2777. Every purchaser of rights or shares of stock in any incorporated company, at any sale thereof, made by any officer, upon receiving a certificate of the sale thereof, as provided in the last section, shall be deemed and held to be the legal and equitable owner of such rights or shares of stock, and he shall be and become entitled to all dividends thereon, and to the same rights and privileges as a member of such incorporated company as the defendant in execution was theretofore entitled to, notwithstanding such rights and shares of stock may not have been transferred upon the books of such company. [S. L. 1882, ch. 80, § 6. S. L. 1886, ch. 60, § 464.]

Shares bound from time of levy.

SEC. 2778. Rights and shares of stock in an incorporated company, levied upon under the provisions of this sub-division, shall be held and bound from the time of the levy made in the manner hereinbefore provided. [S. L. 1882, ch. 80, § 6. S. L. 1886, ch. 60, § 464.]

Pledge of shares as collateral not affected by levy.

SEC. 2779. In all cases where the share or shares of the capital stock of any corporation shall have been pledged in good faith, or hypothecated as collateral security, to any loan or debt, and the certificate thereof shall have been delivered upon such pledge or debt, such share or shares shall not be liable to be taken on execution against the pledgor, except for the excess of value thereof over and above the sum for which the same may have been pledged, and the certificate thereof delivered. [S. L. 1884, ch. 28, § 1.]

SUB-DIVISION 4. EXEMPTIONS FROM EXECUTION.

SECTION.

2780. Homestead.
2781. When homestead exempt.
2782. Homestead for decedent's family.
2783. Of what homestead may consist.
2784. Wife to join in sale, etc., of homestead.
2785. Sale of homestead when worth over $1,500.
2786. On sale of homestead, proceeds exempt.
2787. Wearing apparel.
2788. Head of family, exemptions of.
2789. Exemptions when head of family dies, etc.
2790. Other exemptions—Purchase money—Residence.
2791. Fire saving apparatus exempt.

Homestead.

SEC. 2780. Every householder in the Territory of Wyoming, being the head of a family, shall be entitled to a homestead, not exceeding in value the sum of fifteen hundred dollars, exempt from execution and attachment arising from any debt, contract or civil obligation entered into or incurred. [S. L. 1886, ch. 60, § 432.

When homestead exempt.

SEC. 2781. Such homestead shall only be exempt as provided in the last preceding section, while occupied as such by the owner thereof, or the person entitled thereto, or his or her family. [S. L. 1886, ch. 60, § 433; ch. 83, § 1.]

Homestead for decedent's family.

SEC. 2782. When any person dies seized of a homestead, leaving a widow or husband, or minor children, such widow or husband, or minor children, shall be entitled to the homestead, but in case there is neither widow, husband nor minor children, the homestead shall be liable for the debts of the deceased. [S. L. 1886, ch. 60, § 434.]

Of what homestead may consist.

SEC. 2783. The homestead mentioned in this sub-division may consist of a house and lot, or lots, in any town or city, or if a farm consisting of any number of acres, not exceeding one hundred and sixty acres, so that the value does not exceed fifteen hundred dollars, [S. L. 1886, ch. 60, § 435.]

Wife to join in sale, etc., of homestead.

SEC. 2784. Every owner or occupant of a homestead as established herein, may voluntarily sell, mortgage or otherwise dispose of, or incumber the same; *Provided*, That every such sale, mortgage, disposal or incumbrance shall be absolutely void, unless the wife of the owner or occupant of such homestead, if he have any, shall, separate and apart from her said husband, freely and voluntarily sign and acknowledge the instrument of writing, conveying, mortgaging, disposing of, or incumbering such homestead, and the officer taking her acknowledgment shall fully apprise her of her right and the effect of signing and acknowledging such instrument. [S. L. 1886, ch. 60, § 436; ch. 83 § 2.]

Sale of homestead when worth over $1,500.

SEC. 2785. When any creditor shall be of the opinion that any homestead provided for in this sub-division is of greater value than fifteen hundred dollars, on filing an affidavit of that fact with the clerk of the district court, such creditor may proceed against said homestead as in ordinary cases, and if the said homestead shall sell for more than fifteen hundred dollars and costs, the excess shall be applied to the payment of the demand of such creditor, but in all such cases, the sum of fifteen hundred dollars, free of charge or expense, shall be paid to the owner of the homestead; and in case the said homestead shall not sell for more than fifteen hundred dollars and costs, the person instituting the proceedings shall pay all the costs of such proceedings and the said proceeding cease, and not affect or impair the rights of the owner of the homestead. [S. L. 1886, ch. 60, § 437.]

On sale of homestead, proceeds exempt.

SEC. 2786. In case of the sale of said homestead on execution or otherwise, the proceeds of such sale, not to exceed fifteen hundred dollars, shall be exempt from attachment or levy on execution, and any subsequent homestead acquired by the proceeds thereof, shall also be exempt from execution or attachment, nor shall any judgment or other claim against the owner of such homestead be a lien against the same, in the hands of a *bona fide* purchaser for a valuable consideration. [S. L. 1886, ch. 60, § 438.]

Wearing apparel.

SEC. 2787. The necessary wearing apparel of every person, not exceeding in value the sum of one hundred and fifty dollars, to be determined in the same manner as provided in the next section, shall be exempt from levy or sale upon execution, writ of attachment, or any process issuing out of any court in this territory. [S. L. 1886, ch. 60, § 439.]

Head of family, exemptions of.

SEC. 2788. The following property, when owned by any person, being the head of a family, and residing with the same, shall be exempt from levy or sale upon execution, writ of attachment, or any process issuing out of any court in this territory, and such articles of property shall continue exempt while the family of such person are removing from one place of residence to another in this territory; *Provided*, That no property of any person about to remove or abscond from this territory shall be exempt under the provisions of this sub-division:

First—The family bible, pictures and school books;

Second—A lot in any cemetery or burial ground;

Third—Furniture, bedding, provisions and such other articles as the debtor may select, not to exceed in all the value of five hundred dollars, the value of the property selected by any debtor to be ascertained by the appraisement of three disinterested householders, to be selected and summoned by the officer claiming to levy upon, attach or sell such property, the appraisers shall be sworn by the officer to make a true appraisement of the value of such property, and shall be entitled to receive one dollar each for their services, and the officer levying upon or attaching such property, shall receive two dollars for all services in determining the property exempt, and the value thereof; the fees of the officer and appraisers to be paid by the party for whose benefit the process may have been issued, and to be taxed as costs in the cause in which such process issued. [S. L. 1886, ch. 60, § 440.]

For exemption of wages necessary for support of debtor s family, see § 2831.

Exemptions when head of family dies, etc.

SEC. 2789. Whenever, in any case, the head of a family shall die, desert or cease to reside with the same, the said family shall be entitled to and receive all the benefits and privileges which are in the preceding section conferred upon the head of a family residing with the same, and in such case the said family, or any member thereof, may make selection of the property claimed as exempt; *Provided*, That in any case where the property before mentioned shall be the sole and separate property of the wife, it shall, to the same extent and for all purposes, be exempt for the debts of the wife. [S. L. 1886, ch. 60, § 441.]

Other executions--Purchase money—Residence.

SEC. 2790. The tools, team and implements, or stock in trade of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business, not exceeding in value three hundred dollars, the library, instruments and implements of any professional man, not exceeding in value three hundred dollars, shall be exempt from levy or sale upon execution, writ of attachment or any process issuing out of any court in this territory; the value of any property claimed to be exempt under this section shall be determined in all respects, and the fees shall be the same as specified in section twenty-seven hundred and eighty-eight; *Provided*, That no article of property in this and the preceding sections of this sub-division mentioned, shall be exempt from attachment of sale upon execution for the purchase money of said article of property; *And, provided further*, That the person or persons claiming such exemptions shall be a *bona fide* resident of this territory. [S. L. 1886, ch. 60, § 442.]

Fire saving apparatus exempt.

SEC. 2791. The fire engine or engines, hose cart or carts, hook and ladder truck or trucks, hooks, ladders, buckets and other property owned or possessed by any county, city, town, village, company or body of men, incorporated or otherwise, which shall be used or kept for the purpose of extinguishing fires and protecting property, shall be exempt from levy or sale upon execution, writ of attachment or any process issuing out of any court of this territory. [S. L. 1886, ch. 60, § 443.]

SUB-DIVISION 5. PROCEDURE WHEN CHATTELS CLAIMED BY THIRD PERSON.

SECTION.
2792. Officer to notify justice—Jury—Notice to execution plaintiff.
2793. Proceedings upon trial—Judgment—Costs.
SECTION.
2794. Undertaking by execution plaintiff to stay judgment.

Officer to notify justice—Jury—Notice to execution plaintiff.

SEC. 2792. If the officer, by virtue of a writ of execution issued from any court of record of this territory, levy such execution on goods and chattels claimed by a person other than the defendant, such officer shall forthwith give notice, in writing, to a justice of the peace of the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant, and at the same time furnish the justice a schedule of the property claimed, the justice shall, immediately upon the receipt of the notice and schedule, make an entry of the same upon his docket, and issue a summons, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested men, having the qualifications of an elector, who shall be named in the summons, to appear before him, at the time and place therein mentioned, which time shall not be more than three days after the date of the writ, to try and determine the right of the claimant to the property in controversy; the claimant shall give two days notice in writing to the plaintiff, or other party for whose benefit the execution was issued and levied, his agent or attorney, if within the county, of the time and place of trial; and he shall, moreover, prove to the satisfaction of the justice that such notice was given, or that it could not be given by reason of the absence of the party, his agent or attorney. [S. L. 1886, ch. 60, § 444. R. S. O., § 5444.]

This provision applies in case of property attached, see § 2906.

Proceedings upon trial—Judgment—Costs.

Sec. 2793. The jurors, summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give according to the evidence; if the jury find that the right to the goods and chattels, or any part thereof, is in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such finding for the claimant that he recover his costs against the plaintiff in execution, or other party for whose benefit the execution issued, and also that he have restitution of the goods and chattels, or any part thereof, according to the finding of the jury; but if the jury find that the right to the goods and chattels, and every part thereof, is not in the claimant, the justice shall render judgment on such finding in favor of the plaintiff in execution, or other party for whose benefit the execution issued, and against the claimant for costs, and award execution thereon; if the jury fail to agree, and be discharged, costs shall be taxed, to abide the final event of the proceeding before the justice, and another jury shall be summoned in like manner as before; a judgment for the claimant, unless an undertaking be executed as provided in the next section, shall be a justification of the officer in returning " no goods " to the writ of execution by virtue of which the levy was made as to such part of the goods and chattels as were found to belong to the claimant; and the same fees shall be allowed and taxed by the justice, for himself, officers, jurors and witnesses, as are allowed by law for like services in other cases. [S. L. 1886, ch. 60, § 445. R. S. O., § 5445.]

Undertaking by execution plaintiff to stay judgment.

Sec. 2794. If the jury find that the property, or any part thereof, is in the claimant, and the plaintiff in execution, at any time within three days after the trial, tender to the officer having the property in his custody on execution, an undertaking in double the amount of the value of the property, as assessed by the jury, with good and sufficient sureties, payable to the claimant, to the effect that they will pay all damages sustained by reason of the detention or sale of the property, the officer shall deliver such undertaking to the claimant, and proceed to sell the property as if no trial of the right thereto had taken place, and shall not be liable to the claimant therefor. [S. L. 1886, ch. 60, § 446. R. S. O., § 5446.]

SUB-DIVISION 6. EXECUTION AGAINST THE PERSON.

SECTION.
2795. Requisites of execution.
2796. Causes for issuing.
2797. By whom allowed—Affidavit.
2798. Issuance by justice of the peace.
2799. When issued of course.
2800. Discharge by delivery of property.
SECTION.
2801. Prison bounds—Execution against property.
2802. Death of debtor not to satisfy judgment.
2803. Time of detention when arrested before judgment.
2804. When debtor may be discharged.

Requisites of execution.

SEC. 2795. An execution against the person of the judgment debtor shall require the officer to arrest such debtor, and commit him to the jail of the county until he pays the judgment, or is discharged according to law. [S. L. 1886, ch. 60, § 477. R. S. O., § 5447.]

Causes for issuing.

SEC. 2796. An execution against the person of the debtor may be issued upon any judgment for the payment of money:

First—When the judgment debtor has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment;

Second—When he has property, rights in action, evidence of debt, or interest or stock in a corporation or company, which he fraudulently conceals with the like intent;

Third—When he has assigned or disposed of all or part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution;

Fourth—When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered;

Fifth—When the judgment was rendered for money, or other valuable thing, lost by playing at any game, or by means of any bet or wager;

Sixth—When he was arrested on an order before judgment, and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made. [S. L. 1886, ch. 60, § 448. R. S. O., § 5448.]

By whom allowed—Affidavit.

SEC. 2797. An execution against the person of the debtor, except as prescribed in section twenty-seven hundred and ninety-nine, can be issued only when allowed by the district court, or any judge thereof, upon being satisfied, by the affidavit of the judgment creditor, or his attorney, and such other evidence as may be presented, of the existence of one or more of the particulars mentioned in the preceding section. [S. L. 1886, ch. 60, § 449. R. S. O., § 5449.]

Issuance by justice of the peace.

SEC. 2798. A justice of the peace may issue an execution against the person of the judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by like affidavit and evidence. [S. L. 1886, ch. 60, § 450. R. S. O., § 5450.]

When issued of course.

SEC. 2799. When the judgment debtor was arrested before judgment and has not been released from imprisonment by an application for relief as an insolvent debtor, and the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course. [S. L. 1886, ch. 60, § 451. R. S. O., § 5451.]

Discharge by delivery of property.

SEC. 2800. A person taken in execution as aforesaid shall be discharged by delivering or setting off to the officer who serves the writ, if issued from a court of record, real or personal property, or if issued by a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ was issued. [S. L. 1886, ch. 60, § 452. R. S. O., § 5452.]

Prison bounds—Execution against property.

SEC. 2801. A person imprisoned under the provisions of this sub-division shall be entitled to prison bounds, as prescribed by law; but in case the person is out of jail in prison bounds, the judgment creditor, upon whose judgment he was imprisoned, shall be entitled to execution against the lands and tenements, goods and chattels of the debtor, and all other remedies prescribed by law for the collection of debts. [S. L. 1886, ch. 60, § 453. R. S. O., § 5453.]

Death of debtor not to satisfy judgment.

SEC. 2802. The death of a person under arrest in an action shall not satisfy the judgment; but an execution may issue on the judgment as if no arrest had been made. [S. L. 1886, ch. 60, § 454. R. S. O., § 5454.]

Time of detention when arrested before judgment.

SEC. 2803. If a person who is in prison under an order of arrest, made before judgment, be not charged in execution within ten days after judgment, he shall be discharged from such imprisonment. [S. L. 1886, ch. 60, § 455. R. S. O., § 5455.]

When debtor may be discharged.

SEC. 2804. A person imprisoned under this sub-division, or upon an order of arrest before judgment in civil cases, who is unable to perform the act, or endure the imprisonment, may be discharged therefrom upon such terms as are just, by the court out of which the process issued, or a judge thereof, or by the court in which the judgment was or might have been rendered, or a judge thereof. [S. L. 1886, ch. 60, § 456. R. S. O., § 5456.]

SUB-DIVISION 7. PRIVILEGE FROM ARREST—PRISON BOUNDS.

SECTION.

2805. Persons privileged from arrest.
2806. When and where arrest forbidden.
2807. Arrest for crime, and serving summons, not restricted.
2808. Notice to legislature of arrest of member or officer.
2809. Discharge when wrongfully arrested.
2810. Prison bounds prescribed.
2811. Bond to obtain privilege of prison bounds.

Persons privileged from arrest.

SEC. 2805. The following persons are privileged from arrest:

First—Members, clerks, sergeant-at-arms, door-keepers and messengers of the council and house of representatives during the sessions of the general assembly, and while traveling to and from such sessions, allowing one day for every twenty-five miles of the distance, by the route most usually traveled; and whoever arrests any such person in violation of this provision, shall forfeit and pay one hundred dollars, to be recovered by civil action, in the name and for the use of the person injured;

Second—Electors, while going to and returning from, or in attendance at elections;

Third—Judges of the courts, while attending court, and also during the time necessarily employed in going to, holding and returning from the court which it is their duty to attend;

Fourth—Attorneys, counsellors-at-law, clerks, sheriffs, coronors, constables, and criers, and all suitors, jurors and witnesses, while going to, attending or returning from court;

Fifth—Females, on any mesne or final process for any debt, claim or demand arising upon contract;

Sixth—Israelites and such other persons as religiously observe the last or any other day of the week as a day of worship, on such day, within, going to, or returning from their places of worship, or during the time of service, and while going to or returning therefrom;

Seventh—A person doing militia duty under the order of his commanding officer, or while going to or returning from the place of duty or parade. [S. L. 1886, ch. 60, § 457. R. S. O., § 5457.]

When and where arrests forbidden.

SEC. 2806. No person shall be arrested during a sitting of the council or house of representatives, within the hall where such session is being held, or in any court of justice during the sitting of such court, or on the first day of of the week, commonly called Sunday, or on the fourth day of the month of July. [S. L. 1886, ch. 60, § 458. R. S. O., § 5458.]

Arrest for crime, and serving summons, not restricted.

SEC. 2807. Nothing in this sub-division contained shall be construed to extend to cases of treason, felony or breach of the peace, or to privilege any person herein specified from being served at any time with a summons or notice to appear; and all arrests, not contrary to the provisions herein contained, made in any place, or on any river or water course within or bounding upon this territory, shall be deemed lawful. [S. L. 1886, ch. 60, § 459. R. S. O., § 5459.]

Notice to legislature of arrest of members or officers.

SEC. 2808. If, during a session of the legislative assembly, a member or officer thereof be arrested upon a charge of treason, felony or breach of the peace, notice thereof shall be given forthwith to the body with which he is connected, by the officer who issued the process upon which the arrest is made. [S. L. 1886, ch. 60, § 460. R. S. O., § 5460.]

Discharge when wrongfully arrested.

SEC. 2809. A person arrested contrary to the provisions of this sub-division shall be discharged by a writ of *habeas corpus* or in a summary way, by motion before the court from which the process issued, at the cost of the party who sued out the process. [S. L. 1886, ch. 60, § 461. R. S. O., § 5461.]

Prison bounds prescribed.

SEC. 2810. A person imprisoned for debt shall be entitled to the privilege of prison bounds, which shall be co-extensive with the limits of the county, but such prisoner shall not, in any instance, pass over or without such limits. [S. L. 1886, ch. 60, § 462. R. S. O., § 5462.]

Bond to obtain privilege of prison bounds.

SEC. 2811. A prisoner shall not be entitled to the privilege of prison bounds until he give bond to the creditors, with two or more sureties, resident in the county, approved by the justice who issued the process, or in other cases by the probate judge, in double the sum for which he stands committed, for his safe continuance in the custody of the jailor, within the limits of the prison bounds, until legally discharged, which bond shall be lodged with the sheriff until the creditor demands the same, and when the condition of the bond is broken the creditor may put the bond in suit and have judgment entered against the sureties for the debt, interest and costs for which the prisoner stands committed. [S. L. 1886 ch. 60 § 463. R. S. O., § 5463.]

CHAPTER 2.

PROCEEDINGS IN AID OF EXECUTION.

SUB-DIVISION 1. BY CIVIL ACTION.
SUB-DIVISION 2. BY GARNISHMENT AGAINST RAILROAD COMPANIES.
SUB-DIVISION 3. BY EXAMINATION OF DEBTOR.
SUB-DIVISION 4. BY ATTACHMENT.

SUB-DIVISION 1. BY CIVIL ACTION.

SECTION 2812. When to proceed against equitable assets, etc.

When to proceed against equitable assets, etc.

SEC. 2812. When a judgment debtor has not personal or real property subject to levy on execution sufficient to satisfy the judgment, any equitable interests which he has in real estate, as mortgagor, mortgagee or otherwise, or any interest he has in any banking, turnpike, bridge or other joint stock company, or in any money contract, claim or chose in action, due or to become due to him, or in any judgment or order, or any money, goods or effects which he has in the possession of any person, or body politic or corporate, shall be subject to the payment of the judgment by action. [S. L. 1886, ch. 60, § 464. R. S. O., § 5464.]

SUB-DIVISION 2. BY GARNISHMENT AGAINST RAILROAD COMPANIES.

SECTION.
2813. Affidavit for garnishment—Notice to garnishee.
2814. Service of notice.
2815. Examination of garnishee.
2816. Attachment against garnishee.
SECTION.
2817. Garnishee to deliver money and property to officer.
2818. Sale of property.
2819. Assignments of property, when void.

Affidavit for garnishment—Notice to garnishee.

SEC. 2813. The plaintiff, or his agent or attorney, in a judgment against a railroad company, rendered in any court, upon a claim due to common laborers for work and labor performed for the company, or for cross-ties, lumber or wood furnished thereto, to be used in the construction, repair or operation of its road, or for the erection of fences along the line of its road, required by law to be erected, or upon a note or other evidence of indebtedness, given for the considerations aforesaid, may file with a precipe for execution upon such judgment his affidavit, setting forth the claim upon which the judgment is founded, that he has no knowledge of any property of the defendant liable to levy and sale upon the execution, and that a person or corporation, to be therein named, and within the jurisdiction of the officer to whom the execution is to be directed, is indebted to the defendant, or has property or claims of the defendant in his possession or under his control, as agent of the defendant or otherwise; and thereupon the clerk shall issue a notice to each person or corporation named, to the effect that he is required to pay over and deliver to the officer holding such writ, the money, property and claims of the defendant, in his possession or under his control, at any time before the satisfaction of the judgment, not exceeding an amount sufficient to pay the same and costs. [S. L. 1886, ch. 60, § 465. R. S. O., § 5465.]

Service of notice.

SEC. 2814. The officer shall serve upon each garnishee named in the notice a copy of the execution and notice, and the person so served shall be bound to the plaintiff in execution, from the date of such service, for all the money, property and credits of the defendant in his possession or under his control, or which may come into his possession or under his control at any time before satisfaction of the judgment. [S. L. 1886, ch. 60, § 466. R. S. O., § 5466.]

Examination of garnishee.

SEC. 2815. The garnishee may be required, by written notice, at any time after service on him as above provided, to appear before any officer within his county competent to administer oaths, or before the clerk of the district court of his county, and answer such questions as may be asked him touching the property of every description, money and credits of the defendant in his possession or under his control; the notice shall be signed by the plaintiff or his agent or attorney; shall specify the time when and place where the examination will be held, and shall be served at least one day before the day fixed for the examination; the examination shall be reduced to writing, signed by the garnishee, certified by the officer before whom it was taken, and filed with the papers in the case; and the garnishee shall be entitled to the same fees for attendance as are allowed to witnesses. [S. L. 1886, ch. 60, § 467. R. S. O., § 5467.]

Attachment against garnishee.

SEC. 2816. If the garnishee refuse to appear as required by the notice, an attachment may be issued against him, upon proof made of due service of the notice, or if, having appeared, he refuse to answer such questions as are asked him as aforesaid, the officer before whom the examination is being had shall commit him to the jail of the county until he answers such questions or is discharged according to law. [S. L. 1886, ch. 60, § 468. R. S. O., § 5468.]

Garnishee to deliver money and property to officer.

SEC. 2817. The garnishee shall pay over to the officer all money in his hands, or under his control, or which may come into his hands or control, belonging to the defendant, not exceeding the amount of the judgment and costs, and deliver to the officer all property and credits of the defendants in his hands, or which may come into his hands, and take his receipt for such money, property or credits, which receipts shall be a sufficient discharge of liability therefor; and upon refusal by such garnishee to pay over or deliver as aforesaid, the plaintiff may commence an action therefor in his own name against the garnishee, and recover the same with costs. [S. L. 1886, ch. 60, § 469. R. S. O., § 5469.]

Sale of property.

SEC. 2818. The officer shall sell, as upon execution, any property of the defendant so delivered to him which would be liable to seizure and sale upon execution, and shall hold all the other property to abide the order of the court. [S. L. 1886, ch. 60, § 470. R. S. O., § 5470.]

Assignments of property, when void.

SEC. 2819. An assignment or transfer of property, in the hands or under the control of any agent of such railroad company at the date of the service of notice of garnishment, or which may afterwards, and before the satisfaction of the judgment come into his hands, or under his control, shall be void as against judgment claimants under this sub-division. [S. L. 1886, ch. 60, § 471. R. S. O., § 5471.]

SUB-DIVISION 3. BY EXAMINATION OF DEBTOR.

SECTION.
2820. Examination after return of execution unsatisfied.
2821. Examination before return of execution.
2822. Order of arrest and proceedings thereon.
2823. Examination of debtor of judgment debtor
2824. Fraud no excuse for not answering.
2825. Reference by judge.
2826. Continuance of proceedings.
2827. Attendance of parties and witnesses compelled.
2828. Examination before referee.
2829. Punishment for disobedience of order.
2830. Debtor may pay execution against creditor.
SECTION.
2831. Property may be applied on execution—Exempt wages.
2832. Appointment of receiver.
2833. Liability of sheriff—Receiver's undertaking.
2834. Debtor's equitable or other interest in realty may be sold.
2835. Order's of judge, etc., to be in writing and filed.
2836. Fees of probate judge.
2837. Fees of officers—Collection.

Examination after return of execution unsatisfied.

Sec. 2820. When an execution against the property of a judgment debtor or of one of several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he does not reside in the territory, to the sheriff of the county where the judgment was rendered or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor shall be entitled to an order from the probate judge or a judge of the district court of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property before such judge or a referee appointed by such judge, at a time and place within the county, to be specified in the order. [S. L. 1886, ch. 60, § 472. R. S. O., § 5472.]

Examination before return of execution.

Sec. 2821. After the issue of an execution against property, and upon proof by the affidavit of the judgment creditor or otherwise, to the satisfaction of the district court or a judge thereof, or a probate judge of the county in which the debtor is found, that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may by order require the judgment debtor to appear at a time and place in such county to answer concerning the same, and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are prescribed in this sub-division. [S. L. 1886, ch. 60, § 473. R. S. O., § 5473.]

Order of arrest and proceedings thereon.

Sec. 2822. Instead of the order requiring the attendance of the judgment debtor, as provided in the two preceding sections, the judge may, upon proof in writing to his satisfaction, by affidavit of the judgment creditor or otherwise, that there is danger of the debtor leaving the territory or concealing himself to avoid the examination herein mentioned, issue a warant requiring the sheriff to arrest and bring before him the debtor; such warrant can be issued only by a judge of the district court or the probate judge of a county in which the debtor is found, and the sheriff can execute it only within that county; in executing the warrant the sheriff shall deliver to the debtor a copy thereof and of the testimony on which it issued; the debtor, when brought before the judge, shall be examined on oath, and other witnesses may be examined on either side; if it appear in the examination that there is danger of the debtor leaving the territory or that he has property which he unjustly refuses to apply to the judgment, he may be ordered to enter into an undertaking, with surety, in such sum as the judge may prescribe, that he will attend before the judge or a referee for examination from time to time, as shall be directed, and in default of entering into such undertaking he may be committed to the jail of the county, by warrant of the judge, as for contempt. [S. L. 1886, ch. 60, § 474. R. S. O., § 5474.]

Examination of debtor of judgment debtor.

Sec. 2823. After the return of an execution against the property of a judgment debtor, or of one of several debtors in the same judgment, and upon proof, in writing, by affidavit, or otherwise, to the satisfaction of the judge that a person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member of the corporation, to appear at a specified time and place within the county in which such person or corporation is served, with the order, and answer concerning the same; the service of the order shall bind the property in the possession or under the control of such person or corporation from the time of service; and the person or corporation so served with the order shall be liable to the judgment creditor for all property, money, and credits in his hands belonging to the judgment debtor, or due to him from such person or corporation from the time of service; but if, on the filing of the affidavit of the judgment creditor, his agent or attorney, the judge is satisfied of the existence of any of the grounds upon which an order of attachment may be issued, as provided in section twenty-eight hundred and sixty-nine, the order may be issued before the issue and return of execution; and the judge may also require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper. [S. L. 1886, ch. 60, § 475. R. S. O., § 5475.]

Fraud no excuse for not answering.

SEC. 2824. No person shall, on examination pursuant to this sub-division, be excused from answering any question on the ground that his examination will tend to convict him of a fraud; but his answer shall not be used as evidence against him in a prosecution for such fraud. [S. L. 1886, ch. 60, § 476. R. S. O., § 5476.]

Reference by judge.

SEC. 2825. The judge may, in his discretion, order a reference to a referee agreed upon, or appointed by him to report the evidence or the fact. [S. L. 1886, ch. 60, § 477. R. S. O., § 5477.]

Continuance of proceedings.

SEC. 2826. The judge or referee, acting under the provisions of this chapter, may continue his proceedings from time to time until they are completed. [S. L. 1886, ch. 60, § 478. R. S. O., § 5478.]

Attendance of parties and witnesses compelled.

SEC. 2827. A party or witness may be compelled, by an order of the judge, or by a subpœna, to attend before a judge or referee to testify. [S. L. 1886, ch. 60, § 479. R. S. O., § 5479.]

Examination before referee.

SEC. 2828. If before a referee, the examination must be taken by the referee and certified to the judge; all examinations and answers before a judge or referee, must be on oath; and when a corporation answers, the answer must be on the oath of an officer thereof. [S. L. 1886, ch. 60, § 480. R. S. O., § 5480.]

Punishment for disobedience of order.

SEC. 2829. If a person, party or witness disobey an order of the judge or referee, duly served, he may be punished as for contempt; and such judge or referee may enforce, order and punish for contempt, in like manner as justices of the peace. [S. L. 1886, ch. 60, § 481. R. S. O., § 5481.]

Debtor may pay execution against creditor.

SEC. 2830. After the issue of execution against property, a person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution. [S. L. 1886, ch. 60, § 482. R. S. O., § 5482.]

Property may be applied on execution—Exempt wages.

SEC. 2831. The judge may order any property of the judgment debtor, or money due to him, not exempt by law, in the hands either of himself or other person, or of a corporation, to be applied toward the satisfaction of the judgment; but the earnings of the debtor for his personal services at any time within three months next preceding the order cannot be so applied, when it is made to appear, by the affidavit of the debtor, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor. [S. L. 1886, ch. 60, § 483. R. S. O., § 5483.]

Appointment of receiver.

SEC. 2832. The judge may, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, and he may also, by order, forbid a transfer, or other disposition of, or any interference with, the property of the judgment debtor, not exempt by law. [S. L. 1886, ch. 60, § 484. R. S. O., § 5484.]

Liability of sheriff—Receiver's undertaking.

SEC 2833. If the sheriff be appointed receiver, he and his sureties shall be liable on his official bond as such receiver; and if another person be appointed he shall take an oath and give an undertaking as in other cases. [S. L. 1886, ch. 60, § 485. R. S. O., § 5485.]

Debtor's equitable or other interest in realty may be sold.

SEC. 2834. If it appear that the judgment debtor has an interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and his interest can be ascertained as between himself and the person holding the legal estate, or the person having a lien on or interest in the same, without controversy as to the interest of such person holding such legal estate, or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate, or the interest of the debtor therein; such sale shall be conducted in all respects in the same manner as is provided for the sale of real estate upon execution; and the proceedings of sale shall, before the execution of the deed, be approved by the court in which the judgment was rendered or the transcript filed. [S. L. 1886, ch. 60, § 486. R. S. O., § 5486.]

Order of judge, etc., to be in writing and filed.

SEC. 2835. The order mentioned in sections twenty-eight hundred and twenty, twenty-eight hundred and twenty-one, and twenty-eight hundred and twenty-three, shall be in writing, and signed by the judge who makes the same, and shall be served as a summons; and the judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice is filed, and the clerk shall enter on his execution docket the time of filing the same. [S. L 1886, ch. 60, § 487. R. S. O., § 5487.]

Fees of probate judge.

SEC. 2836. The probate judge shall be allowed for his services under this sub-division the sum of three dollars in each case, and such fees as are allowed by law to clerks of the district court for similar services. [S. L. 1886, ch. 60, § 488. R. S. O., § 5488.]

Fees of officers—Collection.

SEC. 2837. The judge shall allow to clerks, sheriffs, referees, receivers and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order the collection thereof, from such party or parties as ought to pay the same. [S. L. 1886, ch. 60, § 489. R. S. O., § 5489.]

SUB-DIVISION 4. BY ATTACHMENT.

SECTION 2838. What judgments may be enforced by attachment.

What judgments may be enforced by attachment.

SEC. 2838. When the judgment is not for the recovery of money or real property, it may be enforced by attachment, by the court which rendered the same, upon motion made, or by a rule of the court upon the defendant; but in either case notice of the motion, or a service of a copy of the rule, shall be made on the defendant a reasonable time before the order of attachment is made. [S. L. 1886, ch. 60, § 490. R. S. O., § 5490.]

DIVISION 6. PROVISIONAL REMEDIES.

CHAPTER 1. ARREST AND BAIL.
CHAPTER 2. ATTACHMENT.
CHAPTER 3. ATTACHMENT BEFORE DEBT DUE.
CHAPTER 4. INJUNCTIONS.
CHAPTER 5. RECEIVERSHIP AND OTHER PROVISIONAL REMEDIES.

CHAPTER 1.

ARREST AND BAIL.

SECTION.
2839. Arrest can be made under this title only.
2840. Order of arrest—Affidavit—Causes.
2841. Bond must first be given.
2842. When order may issue.
2843. Form of order.
2844. When order returnable.
2845. How executed—Alias orders.
2846. Commitment of defendant.
2847. Discharge of defendant on deposit of money.
2848. Money to be paid into court.
2849. Court to control money.
2850. Sheriff liable for money.
2851. Bail, when and how taken.
2852. Plaintiff may object to bail.
2853. Notice of justification.
SECTION.
2854. Manner of justification.
2855. Allowance of bail.
2856. Sheriff's liability as bail.
2857. Liability of sheriff, how fixed and enforced.
2858. Bail adjudged insufficient liable to sheriff.
2859. Liability of bail, how fixed and enforced.
2860. Surrender of defendant discharges bail.
2861. Bail may arrest defendant.
2862. When bail exonerated.
2863. Money refunded on giving bail.
2864. Stay of proceedings and discharge of bail.
2865. Order may be vacated or bail reduced.
2866. Hearing upon motion to vacate.
2867. Jail fees, how paid.
2868. Discharge of prisoner for non-payment of fees.

Arrest can be made under this title only.

SEC. 2839. A defendant in a civil action can be arrested before judgment in the manner prescribed by this title, and not otherwise; but this provision shall not apply to proceedings for contempt, nor to actions prosecuted or judgments obtained in the name of the Territory of Wyoming to recover fines or penalties. [S. L. 1886, ch. 60, § 491. R. S. O., § 5491.]

Order of arrest—Affidavit—Causes.

SEC. 2840. An order for the arrest of the defendant shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before a judge or clerk of any court of the territory, or a justice of the peace, stating the nature of the plaintiff's claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars:

First—That the defendant has removed, or begun to remove, any of his property out of the jurisdiction of the court with intent to defraud his creditors;

Second—That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors;

Third—That he has property, or rights of action, which he fraudulently conceals;

Fourth—That he has assigned, removed, disposed of, or begun to dispose of, his property or a part thereof, with intent to defraud his creditors;

Fifth—That he fraudulently contracted the debt, or incurred the obligation, for which suit is about to be or has been brought;

Sixth—That the money, or other valuable thing, for which a recovery is sought in the action, was lost by playing any game, or by means of a bet or wager.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of such particulars. [S. L. 1886, ch. 60, § 492. R. S. O., § 5492.]

Bond must first be given.

SEC. 2841. The order of arrest shall not be issued by the clerk until there is executed, by sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay to the defendant all damages, not exceeding double the amount of the plaintiff's claim, stated in the affidavit, which he may sustain by reason of the arrest if the order prove to have been wrongfully obtained. [S. L. 1886, ch. 60, § 493. R. S. O., § 5493.]

When order may issue.

SEC. 2842. The order may be made to accompany the summons, or at any time afterward, before judgment. [S. L. 1886, ch. 60, § 494. R. S. O., § 5494.]

Form of order.

SEC. 2843. It shall be addressed, and delivered, with a copy of the affidavit, to the sheriff, and shall specify the names of the parties, the court in which the action is brought, and the amount of the plaintiff's claim stated in the affidavit, and shall require the sheriff to arrest the defendant, and hold him in bail in double that sum, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given. [S. L. 1886, ch. 60, § 495. R. S. O., § 5495.]

When order returnable.

SEC. 2844. The return day of the order of arrest, when the order issued at the commencement of the suit, shall be the same as that of the summons; and when issued afterward, it shall be fifteen days after it issued. [S. L. 1886, ch. 60, § 496. R. S. O., § 5496.]

How executed—Alias orders.

SEC. 2845. The sheriff shall execute the order by arresting the defendant, and delivering to him a copy thereof and of the affidavit; and if the defendant cannot be found before the return day, the plaintiff may have further orders, without other affidavit or undertaking, until the defendant is arrested; but an order of arrest shall not be issued to any other than the county in which the action is brought. [S. L. 1886, ch. 60, § 497. R. S. O., § 5497.]

Commitment of defendant.

SEC. 2846. The defendant, when arrested, shall be committed to the jail of the county, and kept in custody until discharged by law. [S. L. 1886, ch. 60, § 498. R. S. O., § 5498.]

Discharge of defendant on deposit of money.

SEC. 2847. The defendant may, before or after giving bail, deposit with the sheriff, or in court, the amount of money specified in the order of arrest; whereupon he shall be discharged, or his bail, if any has been given, shall be released. [S. L. 1886, ch. 60, § 499. R. S. O., § 5499.]

Money to be paid into court.

SEC. 2848. The sheriff shall pay into court the money received by him in lieu of bail; and if it be received in vacation, he shall pay it on the first day of the next term, and if received during the term, he shall pay it immediately. [S. L. 1886, ch. 60, § 500. R. S. O., § 5500.]

Court to control money.

SEC. 2849. The court shall make proper orders for the safe keeping of money deposited in lieu of bail, and may direct the sheriff to keep the same, and after final judgment in the action shall order it to be paid to the party entitled thereto, according to the result. [S. L. 1886, ch. 60, § 501. R. S. O., § 5501.]

Sheriff liable for money.

SEC. 2850. Money so deposited with the sheriff, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable, and may be proceeded against for any default in relation thereto, as in other cases of delinquency. [S. L. 1886, ch. 60, § 502. R. S. O., § 5502.]

Bail, when and how taken.

SEC. 2851. Bail may be given by the defendant on his arrest, or at any time afterward, before judgment; it shall be done by causing sufficient bail to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon; and the undertaking when accepted, shall be returned to the clerk's office, and the defendant shall be discharged. [S. L. 1886, ch. 60, § 503. R. S. O., § 5503.]

Plaintiff may object to bail.

SEC. 2852. The plaintiff, or his attorney, may object to the bail for insufficiency, at any time within ten days after the undertaking is given, by serving upon the sheriff a written notice that he does not accept the bail; a failure to serve such notice shall be deemed an acceptance of the bail, and the sheriff shall be exonerated from liability; and when the undertaking is given after the return of the order of arrest, the plaintiff shall have notice thereof. [S. L. 1886, ch. 60, § 504. R. S. O., § 5504.]

Notice of justification.

SEC. 2853. The sheriff, or defendant, may, within ten days after the receipt of such notice, give to the plaintiff, or his attorney, notice in writing of the justification of the same, or other bail, before a judge or clerk of the court in which the action is brought, a probate judge, or a justice of the peace, at a time not less than five nor more than ten days thereafter, and a place to be specified therein; and if other bail be given, a new undertaking must be executed. [S. L. 1886, ch. 60, § 505. R. S. O., § 5505.]

Manner of justification.

SEC. 2854. For the purpose of justification, each of the bail must attend before the proper officer, at the time and place mentioned, and may be examined on oath touching his sufficiency, in such manner as the officer deems proper. [S. L. 1886, ch. 60, § 506. R. S. O., § 5506.]

Allowance of bail.

SEC. 2855. If the officer find the bail sufficient, he shall indorse his allowance on the undertaking, and cause it to be filed with the clerk; and the sheriff shall thereupon be discharged from liability. [S. L. 1886, ch. 60, § 507. R. S. O., § 5507.]

Sheriff's liability as bail.

SEC. 2856. If, after the arrest of the defendant, he escape, or be rescued, or bail be not taken, or be adjudged insufficient, or a deposit be not made, the sheriff shall be liable as bail; but he may discharge himself from liability by putting in sufficient bail at any time before judgment. [S. L. 1886, ch. 60, § 508. R. S. O., § 5508.]

Liability of sheriff, how fixed and enforced.

SEC. 2857. The return of "not found" upon an execution against the body of the defendant, shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest and costs;

and this liability can be enforced only in a separate action against him or against him and his sureties on his official bond, as in other cases of delinquency. [S. L. 1886, ch. 60, § 509. R. S. O., § 5509.]

Bail adjudged insufficient liable to sheriff.

SEC. 2858. The bail adjudged insufficient shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency. [S. L. 1886, ch. 60, § 510. R. S. O., § 5510.]

Liability of bail, how fixed and enforced.

SEC. 2859. The liability of the bail shall be fixed in the manner provided in section twenty-eight hundred and fifty-seven, for fixing the liability of the sheriff as bail, and the bail can be proceeded against in an action only. [S. L. 1886, ch. 60, § 511. R. S. O., § 5511.]

Surrender of defendant discharges bail.

SEC. 2860. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender is made by the defendant himself, or by his bail, shall discharge the bail; such surrender may be made at any time before the return day of the summons in an action against the bail; the sheriff shall give to the bail a written acknowledgment of the surrender and hold the defendant in his custody, upon such copy of the undertaking of the bail, as upon an order of arrest; and the clerk of the court shall, on the production to him of the sheriff's acknowledgment of the surrender, enter on the undertaking an exoneration of the bail. [S. L. 1886, ch. 60, § 512. R. S. O., § 5512.]

Bail may arrest defendant.

SEC. 2861. The bail may, for the purpose of surrendering the defendant, arrest him at any time or place before he is finally charged, or, by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. [S. L. 1886, ch. 60, § 513. R. S. O., § 5513.]

When bail exonerated.

SEC. 2862. The bail shall be exonerated by the death of the defendant, or by his imprisonment in a territorial prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in the execution of such process, within the time fixed in section twenty-eight hundred and sixty, or within such further time as the court in which the action is pending may allow. [S. L. 1886, ch. 60, § 514. R. S. O., § 5514.]

Money refunded on giving bail.

SEC. 2863. If money be deposited by the defendant as provided in section twenty-eight hundred and forty-seven, bail may be given and justified, upon notice as prescribed in section twenty-eight hundred and fifty-three, at any time before judgment; and thereupon the court in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct that the money deposited be refunded to the defendant, and it must be refunded accordingly. [S. L. 1886, ch. 60, § 515. R. S. O., § 5515.]

Stay of proceedings and discharge of bail.

SEC. 2864. If, at any time before or after judment against the bail, proceedings in error be commenced on the judgment against the principal in the suit in which their undertaking was taken, the court may, on motion, stay proceedings against such bail for a reasonable time, on payment by them of all costs that have accrued against them; and if, on such proceedings the judgment against the principal be reversed, and the principal be discharged from such suit, the bail shall be discharged from the undertaking. [S. L. 1886, ch. 60, § 516. R. S. O., § 5516.]

Order may be vacated or bail reduced.

SEC. 2865. A defendant who is arrested may, on motion, at any time before judgment in the action, apply to the court in which suit is brought, if in session, and, in vacation, to a judge thereof, or to any judge of a court of record in the territory, to vacate the order of arrest, or to reduce the amount of the bail; and the court or judge shall allow to him such time for preparation, and the hearing of the motion, as is just and reasonable; but reasonable notice of such motion must be given to the plaintiff. [S. L. 1886, ch. 60, § 517. R. S. O., § 5517.]

Hearing upon motion to vacate.

SEC. 2866. When the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence, in addition to the evidence on which the order of arrest was made. [S. L. 1886, ch. 60, § 518. R. S. O., § 5518.]

Jail fees, how paid.

SEC. 2867. A person who causes another to be committed to jail under the provisions of this chapter, shall be liable in the first instance, for the jail fees, and shall, if required by the jailor, pay such fees weekly in advance, and the fees so paid shall be a part of the costs in the case. [S. L. 1886, ch. 60, § 519. R. S. O., § 5519.]

Discharge of prisoner for non-payment of fees.

SEC. 2868. The sheriff or jailor may discharge a person in prison on mesne or final process issued in a civil proceeding, at any time when there is no money in his hands to pay for the sustenance of such prisoner; or, he may detain the prisoner and hold the adverse party liable for such sustenance. [S. L. 1886, ch. 60, § 520. R. S. O., § 5520.]

CHAPTER 2.

ATTACHMENT.

SUB-DIVISION 1. GROUNDS OF ATTACHMENT.
SUB-DIVISION 2. HOW ATTACHMENT OBTAINED.
SUB-DIVISION 3. EXECUTION AND RETURN THEREOF.
SUB-DIVISION 4. DISPOSITION OF ATTACHED PROPERTY.
SUB-DIVISION 5. PROCEEDINGS UPON ATTACHMENT.
SUB-DIVISION 6. GENERAL PROVISIONS.

SUB-DIVISION 1. GROUNDS OF ATTACHMENT.

SECTION 2869. Causes of attachment in civil actions.

Causes of attachment in civil actions.

SEC. 2869. In a civil action for the recovery of money the plaintiff may, at or after the commencement thereof, have an attachment against the property of the defendant upon the grounds herein stated:

First—When the defendant, or one of the several defendants, is a foreign corporation or a non-resident of this territory, or is about to become a non-resident; or,

Second—Has absconded with intent to defraud his creditors; or,

Third—Has left the county of his residence to avoid the service of a summons; or,

Fourth—So conceals himself that a summons cannot be served upon him; or,

Fifth—Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with intent to defraud his creditors; or,

Sixth—Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh*—Has property or rights in action which he conceals; or,

Eighth—Has assigned, removed, disposed of, or is about to dispose of his property or a part thereof, with the intent to defraud his creditors; or,

Ninth—Has fraudulently or criminally contracted the debt or incurred the obligation for which suit is about to be or has been brought.

But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this territory, for any claim other than a debt or demand arising upon contract, judgment or decree, or for causing death by a negligent or wrongful act. [S. L. 1886, ch. 60, § 521. R. S. O., § 5521.]

SUB-DIVISION 2. HOW ATTACHMENT OBTAINED.

SECTION.
2870. Affidavit for attachment.
2871. Undertaking required.
2872. Order of attachment—Form.
SECTION.
2873. Several orders may be issued.
2874. When returnable.

Affidavit for attachment.

SEC. 2870. An order of attachment shall be made by the clerk of the court in which the action is brought in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing:

First—The nature of the plaintiff's claim;

Second—That it is just;

Third—The amount which the affiant believes the plaintiff ought to recover; and

Fourth—The existence of any one of the grounds for an attachment enumerated in the preceding section, or that the affiant has good reason to believe and does believe that some one or more of said grounds (stating which ones) exists. [S. L. 1886, ch. 60, § 522. R. S. O., § 5522.]

Undertaking required.

SEC. 2871. In no case shall the order of attachment be issued by the clerk until there is executed in his office, by sufficient surety of the plaintiff, to be approved by the clerk, an undertaking in a sum equal to double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment if the order prove to have been wrongfully obtained. [S. L. 1886, ch. 60, § 523. R. S. O., § 5523.]

Order of attachment—Form.

SEC. 2872. The order of attachment shall be directed and delivered to the sheriff, and shall require him to attach the lands, tenements, goods, chattels, stocks or interest on stocks, rights, credits, money and effects of the defendant, in his county, not exempt by law from being applied to the payment of plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable cost of the action not exceeding fifty dollars. [S. L. 1886, ch. 60, § 524. R. S. O., § 5524.]

For manner of attaching shares in a corporation, see §§ 2772 to 2779 inclusive.

Several orders may be issued.

SEC. 2873. Orders of attachment may be issued to the sheriffs of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court. [S. L. 1886, ch. 60, § 525. R. S. O., § 5525.]

When returnable.

SEC. 2874. The return day of the order of attachment, when the order is issued at the commencement of the action, shall be the same as that of the summons; and when issued afterward, it shall be twenty days after it issued. [S. L. 1886, ch. 60, § 526. R. S. O., § 5526.]

SUB-DIVISION 3. EXECUTION AND RETURN THEREOF.

SECTION.
2875. Order of executing different attachments.
2876. Manner of executing.
2877. Forthcoming bond—Custody of property.
2878. Affidavit for garnishment—Service.
2879. Garnishment of public officers.
2880 Answer and examination of garnishee.
SECTION.
2881. Transmission of answer of garnishee.
2882. Garnishee, how served.
2883. Different attachments on same property.
2884. Subsequent attachments, how levied.
2885. Return of officer.
2886. When property and garnishee bound.

Order of executing different attachments.

SEC. 2875. When there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff. [S. L. 1886, ch. 60, § 527. R. S. O., § 5527.]

Manner of execution.

SEC. 2876. The sheriff shall execute the order of attachment without delay; he shall go to the place where the defendant's property is, and there in the presence of two householders of the county, declare that, by virtue of the order, he attaches the property at the suit of the plaintiff; the officer, with the householders who shall first be sworn by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and householders, and returned with the order; when the property attached is real property, the officer shall leave with the occupant thereof, or, if there is no occupant, in a conspicuous place thereon, a copy of the order; and when it is personal property, and can be come at, he shall take it into his custody, and hold it subject to the order of the court. [S. L. 1886, ch. 60, § 528. R. S. O., § 5528.]

For manner of attaching shares in a corporation, see §§ 2772 to 2779 inclusive.

Forthcoming bond—Custody of property.

SEC. 2877. The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with sufficient surety resident in the county, to the effect that the parties to the same are bound in double the appraised value of the property, that the property or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it appear to the court that any part of such property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound. [S. L. 1886, ch. 60, § 529. R. S. O., § 5529.]

Affidavit for garnishment—Service.

SEC. 2878. When the plaintiff, his agent or attorney, makes oath, in writing, that he has good reason to believe and does believe that any person or corporation in the affidavit named has property of the defendant in his possession, describing the same, if the officer cannot get possession of such property, he shall leave with such garnishee a copy of the order of attachment, and a written notice that he appear in court and answer, as provided in section twenty-eight hundred and ninety-five, and if the garnishee does not reside in the county in which the order of attachment was issued, the process may be served by the proper officer of the county in which the garnishee resides, or may be personally served. [S. L. 1886, ch. 60, § 530. R. S. O., § 5530.]

Garnishment of public officers.

SEC. 2879. The service of process of garnishment upon the sheriff, coroner, clerk, constable, master commissioner, marshal of a municipal corporation or other officer having in his possession or under his control any money, claim or other property of the defendant, or in which the defendant has an interest, shall bind the same from the time of such service and shall be a legal excuse to such officers, to the extent of the demand of the plaintiff, for not paying such money or delivering such claims or property to the defendant as by law or the terms of the process in his hands he would otherwise be bound to do. [S. L. 1886, ch. 60, § 531. R. S. O., § 5531.]

Answer and examination of garnishee.

SEC. 2880. The answer of the garnishee, if he resides out of the county, shall be made before the clerk of the district court of the county in which he resides, or if he resides out of the territory, before the clerk of the district court of the county where he was served or where the action is pending; a special examination of the garnishee shall be had, and actions against him under section twenty-eight hundred and ninety-nine shall be brought in the county in which he resides. [S. L. 1886, ch. 60, § 532. R. S. O., § 5532.]

Transmission of answer of garnishee.

SEC. 2881. The clerk of the district court before whom the answer is made shall transmit the same to the clerk of the court in which the suit is pending, in the same manner as depositions are required to be directed and transmitted, and shall receive for his services such fees as are allowed by law for taking depositions, and to clerks for furnishing certificates, with their seals of office attached; and if the garnishee admit an indebtedness to the defendant and the court order the payment of the same or any part thereof to the plaintiff, and the garnishee fail to pay the same according to such order, execution may issue thereon as upon judgments for the payment of money. [S. L. 1886, ch. 60, § 533. R. S. O., § 5533.]

Garnishee, how served.

SEC. 2882. If the garnishee is a person, the copy of the order and notice shall be served upon him personally or left at his usual place of residence, and if a corporation, they shall be left with the president or other principal officer, or the secretary, cashier or managing agent thereof, and if such corporation is a railroad company, they may be left with any regular ticket or freight agent thereof in any county in which the railroad is located. [S. L. 1886, ch. 60, § 534. R. S. O., 5534.]

Different attachments on same property.

SEC. 2883. Different attachments of the same property may be made by the same officer, and one inventory and appraisement shall be sufficient, and it shall not be necessary to return the same with more than one order. [S. L. 1886, ch. 60, § 535. R. S. O., § 5535.]

Subsequent attachments, how levied.

SEC. 2884. When the property is under attachment, attachments on the same under subsequent orders shall be as follows:

First—If it is real property, it shall be attached in the manner prescribed in section twenty-eight hundred and seventy-six;

Second—If it is persoal property, it shall be attached as in the hands of the officer, and subject to any previous attachment;

Third—If a person be made a garnishee more than once with respect to the same indebtedness or liability, a copy of the order and notice shall be left with him, in the manner prescribed in section twenty-eight hundred and seventy-eight. [S. L. 1886, ch. 60, § 536. R. S. O., § 5536.]

Return of officer.

SEC. 2885. The officer shall return upon every order of attachment what he has done under it, and the return must show the property attached, and the time it was attached; when garnishees are served, their names, and the time each was served, must be stated; and the officer shall return with the order all undertakings given under it. [S. L. 1886, ch. 60, § 537. R. S. O., § 5537.]

When property and garnishee bound.

SEC. 2886. An order of attachment shall bind the property attached from the time of service; and the garnishee shall stand liable to the plaintiff in attachment for all property of the defendant in his hands, and money and credits due from him to the defendant, from the time he is served with the written notice mentioned in section twenty-eight hundred and seventy-eight; but when property is attached in the hands of a consignee, his lien thereon shall not be affected by the atachment. [S. L. 1886, ch. 60, § 538. R. S. O., § 5538.]

SUB-DIVISION 4. DISPOSITION OF ATTACHED PROPERTY.

SECTION.
2887. Appointment of receiver.
2888. Duties and powers of receiver.
2889. Notice of appointment.

SECTION.
2890. Report of receiver.
2891. Attaching officer may act as receiver.
2892. Disposition of attached property.

Appointment of receiver.

SEC. 2887. The court, or a judge thereof in vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath and give an undertaking, as provided in other cases. [S. L. 1886, ch. 60, § 539. R. S. O., § 5539.]

Duties and powers of receiver.

SEC. 2888. The receiver shall take possession of all notes, due bills, books of account, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer as the property of the defendant in attachment, and shall proceed to settle and collect the same, and for that purpose he may commence and maintain actions in his own name, as such receiver; but in such actions no right of defense shall be impaired or affected. [S. L. 1886, ch. 60, § 540. R. S. O., § 5540.]

Notice of appointment.

SEC. 2889. The receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment, which notice shall be written or printed, and shall be served on the debtor by copy personally, or by copy left at his residence; and, from the date of such service the debtor shall stand liable to the plaintiff in attachment for the amount of money and credits of the defendant in attachment in their hands, or due from them to him, and shall account therefor to the receiver. [S. L. 1886, ch. 60, § 541. R. S. O., § 5541.]

Report of receiver.

SEC. 2890. The receiver shall, when required, report his proceedings to the court, and hold all money collected by him, and property which may come into his hands, subject to the order of the court. [S. L. 1886, ch. 60, § 542. R. S. O., § 5542.]

Attaching officer may act as receiver.

SEC. 2891. When a receiver is not appointed, the officer who attaches the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name, as such officer; and he may be required to give security other than his official undertaking. [S. L. 1886, ch. 60, § 543. R. S. O., § 5543.]

Disposition of attached property.

SEC. 2892. The court, or a judge thereof in vacation, may make proper orders for the preservation of the property during the pendency of the suit, and may direct a sale of the property when, because of its perishable nature, or the cost of keeping it, a sale will be for the benefit of the parties; the sale shall be made in the manner and with such advertisement, and upon such terms of credit, with security, as the court or judge having regard to the probable duration of the action may direct; and the sheriff shall hold any pay over all proceeds of the sale collected by him, and all money received by him from garnishees, under the same requirements and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail. [S. L. 1886, ch. 60, § 544. R. S. O., § 5544.]

SUB-DIVISION 5. PROCEEDINGS UPON ATTACHMENT.

SECTION.
2893. Attachment may be discharged by undertaking.
2894. Undertaking may be given in vacation.
2895. Appearance and answer of garnishee.
2896. Payment of money by garnishee.
2897. Attachment of garnishee for contempt.
2898. Disposition of property in hands of garnishee.
2899. Action against garnishee.
2900. Cost in such action, and substitution of parties.

SECTION.
2901. Judgment against, and discharge of, garnishee.
2902. Attachment discharged on judgment for defendant.
2903. Sale of attached property to satisfy judgment.
2904. Court may compel delivery of property.
2905. May order sheriff to re-possess himself.
2906. Claims of third person to attach property.
2907. Reference of questions of priority.

Attachment may be discharged by undertaking.

SEC. 2893. If the defendant, or other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff, by sufficient surety resident in the county, to be approved by the court, in double the amount of the plaintiff's claim, as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment shall be discharged and restitution made of any property taken under it or the proceeds thereof, and such undertaking shall also discharge the liability of a garnishee in the action for any property of the defendant in his hands. [S. L. 1886, ch. 60, § 545. R. S. O., § 5545.]

Undertaking may be given in vacation.

SEC. 2894. The undertaking mentioned in the preceding section may, in vacation, be executed in the presence of the officer having the order of attachment in his hands, or after the return of the order, before the clerk, with the same effect as if executed in court, the sureties in either case to be approved by the officer before whom the undertaking is executed. [S. L. 1886, ch. 60, § 546. R. S. O., § 5546.]

Appearance and answer of garnishee.

SEC. 2895. The garnishee, if the order of attachment be returned during a term of court and twenty days before the close thereof, shall appear at that term, and if the order be returned during vacation he shall appear at the term next after its return; and he shall answer under oath all questions put to him touching the property of every description and credits of the defendant in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and in the case of a corporation, any stock therein held by or for the benefit of the defendant at or after the service of the notice. [S. L. 1886, ch. 60, § 547. R. S. O., § 5547.]

Payment of money by garnishee.

SEC. 2896. A garnishee may pay the money owing to the defendant by him to the officer having the order of attachment, or into court; he shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim, and shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands or the true amount owing by him and deliver or pay the same according to the order of the court, he shall be allowed his costs. [S. L. 1886, ch. 60, § 548. R. S. O., § 5548.]

Attachment of garnishee for contempt.

SEC. 2897. If the garnishee fail to appear and answer as required by law, the court wherein the cause is pending may proceed against him by attachment as for contempt. [S. L. 1886, ch. 60, § 549. R. S. O., § 5549.]

Disposition of property in hands of garnishee.

SEC. 2898. If the garnishee appear and answer, and it be discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, and was indebted to him or either, the court may order the delivery of such property, and the payment of the amount owing by him into court, or either; or the court may permit the garnishee to retain the property, or the amount owing, upon the execution of an undertaking to the plaintiff, by sufficient surety, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct. [S. L. 1886, ch. 60, § 550. R. S. O., § 5550.]

Action against garnishee.

SEC. 2899. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure be not satisfactory to the plaintiff, or if he fail to comply with the order of the court to deliver the property and pay the money owing into court, or to give the undertaking required in the last section, the plaintiff may proceed against him by civil action; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff for the amount of property and credits of every kind of the defendant in possession of the garnishee, and for what may appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. [S. L. 1886, ch. 60, § 551. R. S. O., § 5551.]

Costs in such action and substitution of parties.

SEC. 2900. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, he shall pay costs of such action; and when the claim of the plaintiff in attachment is satisfied, the defendant may, on motion, be substituted as the plaintiff in the judgment. [S. L. 1886, ch. 60, § 552. R. S. O., § 5552.]

Judgment against, and discharge of, garnishee.

SEC. 2901. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment is determined; if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged, and recover costs; and if the plaintiff recover against, the defendant in attachment, and the garnishee deliver up all the property and credits of the defendant in his possession, and pay all the money due from him, as the court may order, the garnishee shall be discharged, and the costs of proceedings against him shall be paid out of the property and money so surrendered, or as the court deems right and proper. [S. L. 1886, ch. 60, § 553. R. S. O., § 5553.]

Attachment discharged on judgment for defendant.

SEC. 2902. If judgment in the action be rendered for the defendant, the attachment shall be discharged, and the property attached, or its proceeds, shall be returned to him. [S. L. 1886, ch. 60, § 554. R. S. O., § 5554.]

Sale of attached property to satisfy judgment.

SEC. 2903. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the money arising from the sale of perishable property, and so much of the personal property, and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs; if there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue in all respects as in other cases, and any surplus of the attached property, or its proceeds, shall be returned to the defendant. [S. L. 1886, ch. 60, § 555. R. S. O., § 5555.]

Court may compel delivery of property.

SEC. 2904. The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking has been given, and may proceed summarily on such undertaking to enforce the delivery of the property, or the payment of the money due upon the undertaking by rules and attachment, as in cases of contempt. [S. L. 1886, ch. 60, § 556. R. S. O., § 5556.]

May order sheriff to repossess himself.

SEC. 2905. The court may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which has passed out of his hands without having been sold or converted into money; and the officer shall, under such order, have the same power to take the property as he would have under an order of attachment. [S. L. 1886, ch, 60, § 557. R. S. O., § 5557.]

Claims of third persons to attached property.

SEC. 2906. If personal property which has been attached be claimed by any person other than the defendant, the officer shall have the validity of such claim tried; and such proceedings must be had thereon with the like effect, as if the property had been seized upon execution, and claimed by a third person. [S. L. 1886, ch. 60, § 558. R. S. O., § 5558.]

For provisions regulating the trial of the right of property, see §§ 2792–2794.

Reference of questions of priority.

SEC. 2907. When several attachments are executed on the same property, or the same person is made a garnishee by several parties, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments. [S. L. 1886, ch. 60, § 559. R. S. O., § 5559.]

SUB-DIVISION 6. GENERAL PROVISIONS.

SECTION.
2908. Jurisdiction when obtained—No abatement.
2909. Further security, when required of plaintiff.
2910. Motion to discharge attachment.
2911. Evidence upon motion to discharge.

Jurisdiction, when obtained—No abatement.

SEC. 2908. From the time of the issue of the order of attachment the court shall be deemed to have acquired jurisdiction, and to have control of all subsequent proceedings under this chapter; and if, after the issue of the order, the defendant being a person, die, or being a corporation, its charter expire by limitation, forfeiture or otherwise, the proceedings shall be carried on; but in all such cases, other than where the defendant was a foreign corporation, the legal representatives of the defendant shall be made parties to the action. [S. L. 1886, ch. 60, § 560. R. S. O., § 5560.]

Further security, when required of plaintiff.

SEC. 2909. The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from the territory, or is not sufficient for the amount of the undertaking, it may vacate the order of attachment, and direct restitution of any property taken under it, unless, in a reasonable time, to be fixed by the court, sufficient security be given by the plaintiff. [S. L. 1886, ch. 60, § 561. R. S. O., § 5561.]

Motion to discharge attachment.

SEC. 2910. The defendant may, at any time before judgment, upon reasonable notice to the plaintiff, move to discharge the attachment as to the whole or any of the property attached; and the motion may be heard and decided by the court at any term or regular session thereof, or it may be made, heard and decided by any judge thereof in vacation. [S. L. 1886, ch. 60, § 562. R. S. O., § 5562.]

Evidence upon motion to discharge.

SEC. 2911. When the motion is made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to the evidence on which the order of attachment was made. [S. L. 1886, ch. 60, § 563. R. S. O., § 5563.]

CHAPTER 3.

ATTACHMENT BEFORE DEBT DUE.

SECTION.
2912. Grounds of attachment.
2913. Attachment granted by court—Affidavit.
2914. When attachment refused, action dismissed.
2915. Order must specify amount.
2916. Undertaking required.
2917. Action continued until claim is due.
2918. Application of preceding chapter.

Grounds of attachment.

SEC. 2912. A creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor:

First —When a debtor has sold, conveyed or otherwise disposed of his property with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or,

Second—Is about to make such sale, conveyance or disposition of his property, with such fraudulent intent; or,

Third—Is about to remove his property, or a material part thereof, with the intent, or to the effect of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts; or where the defendant is about to become a non-resident of the territory. [S. L. 1886, ch. 60, § 564. R. S. O., § 5564.]

Attachment granted by court—Affidavit.

SEC. 2913. The attachment authorized by the last section may be granted by the court in which the action is brought, or by a judge thereof; but before such action shall be brought, or such attachment granted, the plaintiff or his agent or attorney, shall make an oath in writing, showing the nature and amount of the plaintiff's claim, that it is just, when it will become due, and the existence of any one of the grounds for attachment enumerated in the last preceding section. [S. L. 1886, ch. 60, § 565. R. S. O., § 5565.]

When attachment refused, action dismissed.

SEC. 2914. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions application for an attachment must be made. [S. L. 1886, ch. 60, § 566. R. S. O., § 5566.]

Order must specify amount.

SEC. 2915. The order of the court or judge granting the attachment shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action. [S. L. 1886, ch. 60, § 567. R. S. O., § 5567.]

Undertaking required.

SEC. 2916. The order of attachment, as granted by the court or judge, shall not be issued by the clerk until there is executed in his office such undertaking on the part of the plaintiff as is directed by section twenty-eight hundred and seventy-one. [S. L. 1886, ch. 60, § 568. R. S. O., § 5568.]

Action continued until claim is due.

SEC. 2917. The plaintiff in such action shall not have judgment on his claim before it becomes due; and the proceedings on attachment may be conducted without delay. [S. L. 1886, ch. 60, § 569. R. S. O., § 5569.]

Application of preceding chapter.

SEC. 2918. Proceedings authorized by the next preceding chapter shall govern attachments under this chapter, so far as the same are applicable. [S. L. 1886, ch. 60, § 570. R. S. O., § 5570.]

CHAPTER 4.

INJUNCTIONS.

SECTION.
2919. Injunction defined.
2920. Causes for injunction.
2921. When and by whom granted.
2922. Notice of application.
2923. Notice to party who answers.
2924. Undertaking required.
2925. Order of injunction and notice thereof.
2926. Service of injunction granted during litigation.
SECTION.
2927. When injunction operates.
2928. Second application for injunction.
2929. Enforcement of injunctions.
2930. Additional security, when required.
2931. Affidavits used on hearing.
2932. Motion to vacate or modify injunction.
2933. Evidence on hearing of motion.
2934. Defendant may obtain injunction.

Injunction defined.

SEC. 2919. The injunction provided by this title is a command to refrain from a particular act; it may be the final judgment in an action or may be allowed as a provisional remedy; and when so allowed it shall be by order. [S. L. 1886, ch. 60, § 571. R. S. O., § 5571.]

Causes for injunction.

SEC. 2920. When it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, a temporary order may be granted restraining such act; and such order may also be granted in any case where it is specially authorized by statute. [S. L. 1886, ch. 60, § 572. R. S. O., § 5572.]

When and by whom granted.

SEC. 2921. The injunction may be granted at the time of commencing the action, or at any time afterward, before judgment by the district court, or a judge thereof, or, in the absence from the county of such judge, by the probate judge of the county, upon its appearing satisfactorily to the court or judge, by affidavit of the plaintiff, or his agent, that the plaintiff is entitled thereto; when the injunction has been allowed, and, during the pendency of the action in the district court, has been vacated either by a judge in vacation, or by the court previous to the trial of the action, and an appeal is taken, after such trial, from the judgment or final order of said court to the supreme court, an injunction may be granted at any time before judgment or final order in the supreme court, by a judge of the supreme court, upon its appearing satisfactorily to the court or judge, by affidavit of the party or his agent, that the party is entitled thereto; and upon the like proof, an injunction may also be allowed by the supreme court or district court, or by a judge of either as a temporary remedy, during the pendency of a case on error or appeal. [S. L. 1886, ch. 60, § 573. R. S. O., § 5573.]

Notice of application.

SEC. 2922. If, in the opinion of the court or judge, the defendant or any party to the suit should be heard before granting the injunction, a reasonable notice may be required to be given to such party of the time, place, and purpose of the application; and such party may, in the meantime be restrained. [S. L. 1886, ch. 60, § 574. R. S. O., § 5574.]

Notice to party who answers.

SEC. 2923. An injunction shall not be granted against a party who has answered, except upon notice; but such party may be restrained until the decision of the application for an injunction. [S. L. 1886, ch. 60, § 575. R. S. O., § 5575.]

Undertaking required.

SEC. 2924. No injunction, unless otherwise provided by special statute, shall operate until the party obtaining the same gives an undertaking, executed by sufficient surety, to be approved by the clerk of the court granting the injunction, in an amount to be fixed by the court, or judge allowing the same, to secure to the party enjoined the damages he may sustain if it be finally decided that the injunction ought not to have been granted. [S. L. 1886, ch. 60, § 576. R. S. O., § 5576.]

Order of injunction and notice thereof.

SEC. 2925. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk; when the injunction is allowed at the commencement of the action, the clerk shall indorse upon the summons "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same when notice of the application therefor has been given to the party enjoined; and the service of the summons so indorsed, or the notice of the application for an injunction, shall be notice of its allowance. [S. L. 1886, ch. 60, § 577. R. S. O., § 5577.]

Service of injunction granted during litigation.

SEC. 2926. When an injunction is allowed during the litigation, and without notice of the application therefor, the order of injunction shall be issued, and the sheriff shall forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay. [S. L. 1886, ch. 60, § 578. R. S. O., § 5578.]

When injunction operates.

SEC. 2927. An injunction shall bind the party from the time he has notice thereof, and the undertaking required by the applicant therefor is executed. [S. L. 1886, ch. 60, § 579. R. S. O., § 5579.]

Second application for injunction.

SEC. 2928. No injunction shall be granted by a judge after a motion therefor has been overruled by his court on the merits of the application; and when it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant by a court of inferior jurisdiction, or any judge thereof. [S. L. 1886, ch. 60, § 580. R. S. O., § 5580.]

Enforcement of injunctions.

SEC. 2929. An injunction or restraining order granted by a judge may be enforced as the act of the court, and disobedience thereof may be punished by the court, or any judge who might have granted it in vacation, as a contempt; an attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction or restraining order, against the party guilty of the same; and such party may be required by the court or judge to pay a fine not exceeding two hundred dollars, for the use of the county, to make immediate restitution to the party injured, and to give further security to obey the injunction or restraining order, and in default thereof, he may be committed to close custody until he complies with such requirement, or is otherwise legally discharged. [S. L. 1886, ch. 60, § 581. R. S. O., § 5581.]

Additional security, when required.

SEC. 2930. A party enjoined, may at any time before judgment, upon reasonable notice to the party who obtained the injunction, move the court or judge for additional security; and if it appear that the surety in the undertaking has removed from the territory, or is insufficient, the court may vacate the injunction, unless, in a reasonable time, sufficient security be given. [S. L. 1886, ch. 60, § 582. R. S. O., § 5582.]

Affidavits used on hearing.

SEC. 2931. On the hearing of an application for an injunction, each party may read affidavits; and all affidavits shall be filed. [S. L. 1886, ch. 60, § 583. R. S. O., § 5583.]

Motion to vacate or modify injunction.

SEC. 2932. When an injunction has been granted, a party may, at any time before the trial, apply to the court in which the action is pending, or a judge thereof, or to the supreme court, or a judge thereof, to vacate or modify the same; the party applying for such vacation or modification shall give to the adverse party such notice of the time and place at which the motion will be heard, as the court or judge may deem reasonable; and the application may be made upon the petition and affidavits upon which the injunction was granted, or upon affidavits on the part of the party enjoined, with or without answer. [S. L. 1886, ch. 60, § 584. R. S. O., § 5584.]

Evidence on hearing of motion.

SEC. 2933. When the application is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence, in addition to the evidence on which the injunction was granted. [S. L. 1886, ch. 60, § 585. R. S. O., § 5585.]

Defendant may obtain injunction.

SEC. 2934. A defendant may obtain an injunction upon an answer in the nature of a counter-claim, and he shall proceed in the manner prescribed in this chapter. [S. L. 1886, ch. 60, § 586. R. S. O., § 5586.]

CHAPTER 5.

RECEIVERSHIP AND OTHER PROVISIONAL REMEDIES.

SECTION.
2935. When receiver appointed.
2936. Who ineligible as receiver.
2937. Oath and undertaking of receiver.
2938. Powers of receiver.

SECTION.
2939. Investment of funds by receiver.
2940. Disposition of trust property during litigation.
2941. Enforcement of orders of court.

When receiver appointed.

SEC. 2935. A receiver may be appointed by the district court or by a judge thereof, or in the absence of said judges from the county, by the probate judge of the county, in the following cases:

First—In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured;

Second—In an action by a mortgagee for the foreclosure of his mortgage and sale of mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

Third—After judgment, to carry the judgment into effect;

Fourth—After judgment, to dispose of the property according to the judgment or preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment;

Fifth—In the cases provided in this title, and by special statute, when a corporation has been dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights;

Sixth—In all other cases where receivers have heretofore been appointed by the usages of courts of equity. [S. L. 1886, ch. 60, § 587. R. S. O., § 5587.]

Who ineligible as receiver.

SEC. 2936. No party, attorney or person interested in an action shall be appointed receiver therein except by consent of the parties. [S. L. 1886, ch. 60, § 588, R. S. O., § 5588.]

Oath and undertaking of receiver.

SEC. 2937. The receiver, before he enters upon his duties, must be sworn to perform them faithfully, and with surety approved by the court, judge or clerk, execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. [S. L. 1886, ch. 60, § 589. R. S. O., § 5589.]

Powers of receiver.

SEC. 2938. The receiver shall have power, under the control of the court, to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect, compound for and compromise demands, make transfers and generally to do such acts respecting the property as the court may authorize. [S. L. 1886, ch. 60, § 590. R. S. O., § 5590.]

Investment of funds by receiver.

SEC. 2939. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order shall be made except upon the consent of all the parties to the action. [S. L. 1886, ch. 60, § 591. R. S. O., § 5591.]

Disposition of trust property during litigation.

SEC. 2940. When it is admitted by the pleadings, or on the examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which being the subject of the litigation, is held by him as trustee for another party, or which belongs to or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. [S. L. 1886, ch. 60, § 592. R. S. O., § 5592.]

Enforcement of orders of court.

SEC. 2941. When a court in the exercise of its authority, orders the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for a contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court. [S. L. 1886, ch. 60, § 593. R. S. O., § 5593.]

DIVISION 7. SPECIAL PROCEEDINGS.

CHAPTER 1. AMERCEMENT.
CHAPTER 2. ARBITRATION.
CHAPTER 3. PARTITION.
CHAPTER 4. REAL ACTIONS.
CHAPTER 5. REPLEVIN.
CHAPTER 6. SURETIES, RIGHTS AND REMEDIES OF.
CHAPTER 7. TAXES AND ASSESSMENTS, RELIEF AGAINST ILLEGAL.
CHAPTER 8. TO CONTEST WILLS.
CHAPTER 9. PROCEEDINGS TO PERPETUATE TESTIMONY.
CHAPTER 10. MANDAMUS.
CHAPTER 11. QUO WARRANTO.
CHAPTER 12. JURISDICTION AND PROCEDURE IN ERROR.

CHAPTER 1.

AMERCEMENT.

SECTION.
2942. Causes for amercement,
2943. Notice of motion for amercement.
2944. Amercement for failure to serve or return process.
2945. Amercement of clerks of courts.
2946. Amount of amercement for not paying over money.
SECTION.
2947. Surety of officer may be made party to judgment.
2948. Officer may have execution on original judgment.

Causes for amercement.

SEC. 2942. If an execution or order of sale directed to an officer come to his hands to be executed, and he neglect or refuse to execute it; or if he neglect or refuse to sell property of any kind, which by any writ or order he is directed to sell; or fail to call an inquest, or to return to the clerk's office a copy of the certificate of appraisement made by the inquest; or neglect to return to the proper court an execution or order of sale to him directed on or before the return day thereof; or neglect to return a correct inventory of personal property taken on execution, unless he return that the amount of the judgment, including costs, has been paid to him; or neglect, on demand, to pay to the person entitled thereto, any money by him collected or received for the use of such person, at any time after he collects or receives the same, or neglect or refuse, on demand, to pay to the judgment debtor all money by him received on any sale made, beyond what is sufficient to satisfy the writ or order of sale, with interest and costs, such officer shall, on motion in court, and notice thereof in writing, as provided in the next section, be amerced in the amount of such judgment, including costs, with ten per centum thereon, to and for the use of such plaintiff or defendant as the case may be. [S. L. 1886, ch. 60, § 594. R. S. O., § 5594.]

Notice of motion for amercement.

SEC. 2943. If the officer resides in the county in which the motion is made, the notice shall be served upon him at least two days before the motion is heard; but if he is an officer of another county, the notice shall be served upon him or left at his office, at least fifteen days before the first day of the term at which the motion will be heard, or sent to him by mail at least sixty days before the first day of such term. [S. L. 1886, ch. 60, § 595. R. S. O., § 5595.]

Amercement for failure to serve or return process.

SEC. 2944. If an officer fail to execute any summons, order, execution or other process directed to him, or to return the same, as required by law, unless he make it appear to the satisfaction of the court that he was prevented by unavoidable accident from so doing, he shall be amerced upon motion and notice, as provided in section twenty-nine hundred and forty-two, in a sum not exceeding one thousand dollars, and be liable to the action of any person aggrieved by such failure; but he shall not be liable to an action or amercement for a failure to execute any such process directed to him from any county other than that in which he was elected, unless his fees are deposted with the clerk who issued the process, and an indorsement of that fact is made and subscribed by such clerk on the process, at the time of its issue, in these words: "Funds are deposited to pay the sheriff on this process." [S. L. 1886, ch. 60, § 596. R. S. O., § 5596.]

Amercement of clerks of court.

SEC. 2945. If a clerk of a court neglect or refuse, on demand, to pay to the person entitled thereto any money by him received in his official capacity for the use of such person, he may be amerced, on motion and notice, as provided in section twenty-nine hundred and forty-two. [S. L. 1886, ch. 60, § 597. R. S O., § 5597.]

Amount of amercement for not paying over money.

SEC. 2946. When the cause of amercement is the refusal to pay over money collected, the officer shall not be amerced in a greater sum than the amount withheld, with ten per centum thereon. [S. L. 1886, ch. 60, § 598. R. S. O., § 5598.]

Surety of officer may be made party to judgment.

SEC. 2947. A surety of an officer may be made party to the judgment rendered as aforesaid against such officer, by action, but the goods and chattels, lands and tenements, of such surety shall not be liable to execution when sufficient goods and chattels, lands and tenements, of the officer against whom execution is issued can be found to satisfy the execution; and either party may proceed against the officer by attachment. [S. L. 1886, ch. 60, § 599. R. S. O., § 5599.]

Officer may have execution on original judgment.

SEC. 2948. If an officer who is amerced has not collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect for his own use, the amount of the judgment, in the name of the original plaintiff. [S. L. 1886, ch. 60, § 600. R. S. O., § 5600.]

CHAPTER 2.

ARBITRATION.

SECTION.
2949. Matters subject to arbitration.
2950. Arbitration bonds.
2951. Time and place of hearing.
2952. Process to compel attendance of witnesses.
2953. Disobedience of process, etc., a contempt.
2954. Arbitrators and witnesses to be sworn.
2955. Award to be in writing, etc.
SECTION.
2956. When award to be filed in court.
2957. Enforcement of money award.
2958. Enforcement of other awards.
2959. Proceedings when award set aside.
2960. Proof required before award enforced.
2961. Fees and costs.

Matters subject to arbitration.

SEC. 2949. All persons who have any controversy, except when the possession or title of real estate may come in question, may submit such controversy to the arbitrament or umpirage of any person or persons, to be mutually agreed upon by the parties, and they may make such submission a rule of any court of record in the territory. [S. L. 1886, ch. 60, § 601. R. S. O., § 5601.]

Arbitration bonds.

SEC. 2950. The parties to such submission may enter into and exchange arbitration bonds, which shall be conditioned for the faithful performance of the award, and set forth the names of the arbitrators or umpire, and the matters submitted to their determination; and when such is the agreement the submission shall be made a rule of any court of record within the territory, or a rule of any particular court of record named in the submission. [S. L. 1886, ch. 60, § 602. R. S. O., 5602.]

Time and place of hearing.

SEC. 2951. The arbitration bonds shall specify a time and place for the hearing, allowing the arbitrators or umpire the right to adjourn from time to time until a conclusion is reached, and a time shall be named in the bonds within which the award shall be made. [S. L. 1886, ch. 60, § 603. R. S. O., § 5603.]

Process to compel attendance of witnesses.

SEC. 2952. The parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the district court or any justice of the peace for the county in which the arbitration is held and shall be returnable before the umpire or arbitrators on a day and place certain, therein named. [S. L. 1886, ch. 60, § 604. R. S. O., § 5604.]

Disobedience of process, etc., a contempt.

SEC. 2953. When a witness who has been duly served with such process fails to attend in obedience thereto, or to be sworn, or to answer as a witness, except in case of a demand and failure to pay his fees, he shall be deemed guilty of contempt of the court from which the process issued, and on complaint made by the party injured to the court whose clerk issued the process, or to the justice, as the case may be, such court or justice may proceed against him, as in other like cases. [S. L. 1886, ch. 60, § 605. R. S. O., § 5605.]

Arbitrators and witnesses to be sworn.

SEC. 2954. The umpire or arbitrators, and all witnesses for any party to the arbitration examined by the umpire or arbitrators, shall be under oath, to be administered to him or them respectively by any judge or justice of the peace of the county. [S. L. 1886, ch. 60, § 606. R. S. O., § 5606.]

Award to be in writing, etc.

SEC. 2955. The award shall be in writing, and signed by the umpire or arbitrators, or a majority of the arbitrators named in the submission; and a true copy of the award shall, without delay, be delivered by the umpire or arbitrators to each of the parties in interest. [S. L. 1886, ch. 60, § 607. R. S. O., § 5607.]

When award to be filed in court.

SEC. 2956. If either of the parties neglect or refuse to comply with the award, the other party may file the award, together with the submission or arbitration bond, in the court named in the submission, or if no particular court is named therein, then in the district court of the county where the arbitration was held. [S. L. 1886, ch. 60, § 608. R. S. O., § 5608.]

Enforcement of money award.

SEC. 2957. The court at the next term thereof, after the award is filed, if no legal exceptions be made or taken to the award, or to other proceedings, and the award is for the payment of money, shall enter judgment thereon, as on the verdict of a jury, between the parties, and issue execution thereon, as in other cases, immediately after the amount specified in the award is due and payable. [S. L. 1886, ch. 60, § 609. R. S. O., § 5609.]

Enforcement of other awards.

SEC. 2958. When the award directs the performance of any act or thing other than the payment of money, a party who disobeys it shall be liable to be punished as for a contempt of court, either by attachment or execution, as the nature of the case requires. [S. L. 1886, ch. 60, § 610. R. S. O., § 5610.]

Proceedings where award set aside.

SEC. 2959. If legal defects appear in the award or other proceedings, or if it be made to appear, on oath, at the term of the court at which the award and arbitration bond are filed, that the award was obtained by fraud, corruption, or other undue means, or that the arbitrators or umpire misbehaved, the court may set aside the award, and the matters submitted shall be retained by the court for trial as upon appeal; the court shall direct who shall be plaintiff and who shall be defendant in the action, and such proceedings shall thereafter be had therein, and such pleadings filed, as in a civil action; and the court may make such order as to costs in the premises, or such other order on the award, as it deems just and right. [S. L. 1886, ch. 60, § 611. R. S. O., § 5611.]

Proof required before award enforced.

SEC. 2960. In all cases the party enforcing an award shall produce satisfactory proof to the court of the due execution of the submission or arbitration bond, and that the party neglecting or refusing to obey the award was furnished with a true copy thereof, at least ten days before the term at which the application to enforce the award was made. [S. L. 1886, ch. 60, § 612. R. S. O., § 5612.]

Fees and costs.

SEC. 2961. Each person chosen as and performing the duties of an arbitrator or umpire under this chapter shall be entitled to receive three dollars per day for his services; and each witness for his attendance and justice or judge for administering oaths, shall be entitled to like fees as in other cases, which fees shall be taxed by the umpire or arbitrators, and included in the award. [S. L. 1886, ch. 60, § 613. R. S. O., § 5613.]

CHAPTER 3.

PARTITION.

SECTION.
2962. Who compelled to make partition.
2963. Where proceedings to be had.
2964. Petition, what to contain.
2965. Order for partition—Appointment of commissioners.
2966. Writ of partition.
2967. Duties of commissioners.
2968. Partition of several tracts.
2969. Amicable partition.
2970. Appraisment—Election to take at appraised value.
2971. Terms of payment—Conveyance.
2972. When estate to be sold.
2973. Conduct and terms of sale.

SECTION.
2974. Confirmation of sale—Conveyance.
2975. Distribution of proceeds—Sheriff's liability
2976. Alias writ for sale—Re-valuation
2977. Succeeding officer may make deed.
2978. Guardian may act for ward.
2979. Powers of foreign guardian.
2980. Actions by one parcener against another.
2981. Partition of property of religious corporations.
2982. Partition of property of religious societies.
2983. Restrictions upon partition under last two sections.
2984. Costs and expenses to be equitably taxed.

Who compelled to make partition.

SEC. 2962. Tenants in common, and co-parceners, of any estate of lands, tenements or hereditaments within the territory, may be compelled to make or suffer partition thereof in manner hereinafter prescribed. [S. L. 1886, ch. 60, § 614. R. S. O., § 5754.]

Where proceedings to be had.

SEC. 2963. When the estate is situate in one county, the proceedings shall be had in that county, and when situated in two or more counties, the proceedings may be had in any county wherein a part of such estate is situate. [S. L. 1886, ch. 60, § 615. R. S. O., § 5755.]

Petition, what to contain.

SEC. 2964. A person entitled to partition of an estate may file his petition therefor in the district court, setting forth the nature of his title, and a pertinent description of the lands, tenements or hereditaments of which partition is demanded, and naming each tenant in common, co-parcener, or other interested person, as defendants therein. [S. L. 1886, ch. 60, § 616. R. S. O., § 5756.]

Order for partition—Appointment of commissioners.

SEC. 2965. If the court find that the plaintiff has a legal right to any part of such estate, it shall order partition thereof in favor of the plaintiff, or all parties in interest; appoint three disinterested and judicious householders of the vicinity to be commissioners to make the partition, and order a writ of partition to issue. [S. L. 1886, ch. 60, § 617. R. S. O., § 5757.]

Writ of partition.

SEC. 2966. The writ of partition may be directed to the sheriff of either of the counties in which any part of the estate lies, and shall command him that, by the oaths of the commissioners, which oath may be administered by him, he cause to be set off and divided to the plaintiff, or each party in interest, such part and proportion of the estate as the court shall order. [S. L. 1886, ch. 60, § 618. R. S. O., § 5758.]

Duties of commissioners.

SEC. 2967. In making such partition the commissioners must view and examine the estate, and on their oaths set apart the same in such lots as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof. [S. L. 1886, ch. 60, § 619. R. S. O., § 5759.]

Partition of several tracts.

SEC. 2968. When partition of more than one tract is demanded, the commissioners shall set off to each plaintiff or party in interest his proper proportion in each of the several tracts, unless the several tracts are owned by the same proprietors in the same proportion in each tract, in which case the whole share of any proprietor, in all the several tracts, may be set off to such proprietor according to the best discretion of the commissioners. [S. L. 1886, ch. 60, § 620. R. S. O., § 5760.]

Amicable partition.

SEC. 2969. Before a writ of partition is issued, the person of whom partition is demanded may appear in court, in person or by attorney, and consent to a partition of the estate, agreeably to the prayer and facts set forth in the petition, which amicable partition, when made and recorded, shall be valid and binding between the parties thereto. [S. L. 1886, ch. 60, § 621. R. S. O., § 5761.]

Appraisement—Election to take at appraised value.

SEC. 2970. When the commissioners are of opinion that the estate cannot be divided according to the demand of the writ, without manifest injury to the value thereof, they shall return that fact to the court, with a just valuation of the estate; whereupon if the court approve of the return, and one or more of the parties elect to take the estate at such appraised value, the same shall be adjudged to him or them, upon his or their paying to the other parties their proportion of the appraised value thereof, according to their respective rights, or securing the same, as hereinafter provided. [S. L. 1886, ch. 60, § 622. R. S. O., § 5762.]

Terms of payment—Conveyance.

SEC. 2971. If one or more of the parties elect to take the estate at the appraised value, the terms of payment, unless the court on good cause shown, by special order, direct and require the entire payment to be made in cash, or unless all the parties in interest agree thereon, shall be one-third cash, one-third in one year and one-third in two years, with interest, the deferred payment to be secured to the satisfaction of the court; and on payment being made in full, or in part, with sufficient security for the remainder, as above provided, the sheriff shall, according to the order of the court, make and execute a conveyance to the party electing to take the same. [S. L. 1886, ch. 60, § 623. R. S. O., § 5763.]

When estate to be sold.

SEC. 2972. If no such election to take the estate be made, the court may, at the instance of a party, make an order for the sale thereof at public auction, by the sheriff who executed the writ of partition, or his successor in office. [S. L. 1886, ch. 60, § 624. R. S. O., § 5764.]

Conduct and terms of sale.

SEC. 2973. All such sales shall be made at the door of the court house, unless the court for good cause direct the same to be made on the premises, and shall be conducted in all other respects as a sale upon execution, except that it shall not be necessary to appraise the estate; but the estate shall not be sold for less than two-thirds of the appraised value thereof, as returned by the commissioners; and unless the court, by special order, direct and require, on good cause shown, the entire payment to be made in cash; the purchase money shall be payable one-third on the day of sale, one-third in one year, and one-third in two years thereafter, with interest. [S. L. 1886, ch. 60, § 625. R. S. O., § 5765.]

Confirmation of sale—Conveyance.

SEC. 2974. On the return by the sheriff of his proceedings, the court shall examine the same; if sale has been made, and the court approve such sale, the sheriff, on receiving payment of the consideration money, or taking sufficient security therefor, to the satisfaction of the court, shall execute and deliver a deed to the purchaser. [S. L. 1886, ch. 60, § 626. R. S. O., § 5766.]

Distribution of proceeds—Sheriff's liability.

SEC. 2975. The money or securities arising from a sale of or an election to take the estate, shall be distributed and paid by order of the court, to the parties entitled thereto in lieu of their respective parts and proportions of the estate, according to their just rights therein; and all receipts of such money or securities by the sheriff shall be in his official capacity, and his sureties on his official bond shall be liable for any misapplication thereof. [S. L. 1886, ch. 60, § 627. R. S. O., § 5767.]

Alias writ for sale—Revaluation.

SEC. 2976. When the estate has been once offered and not sold, an alias writ for the sale thereof may be issued as often as need be; and the court may order a revaluation, by three judicious and disinterested householders of the vicinity, to be appointed by the court, and direct a sale of the estate at not less than two-thirds of such revaluation, or if the court deem it for the interest of the parties, it may order a sale without such revaluation, at not less than such sum as it may fix. [S. L. 1886, ch. 60, § 628. R. S. O., § 5768.]

Succeeding officer may make deed.

SEC. 2977. When a conveyance of land sold, or elected to be taken, is not made by the officer who made the sale, the court being first satisfied that such sale or election was regularly made, and that the purchase money has been fully paid or secured, may on motion order the sheriff of the county, or officer performing the duties of sheriff, to execute and deliver to the purchaser or person electing to take the property, a deed for the lands so sold or elected to be taken. [S. L. 1886, ch. 60, § 629. R. S. O., § 5769.]

Guardian may act for ward.

SEC. 2978. The guardian of a minor, idiot or insane person, may on behalf of his ward, do and perform any act, matter or thing respecting the partition of an estate, which such minor, idiot or insane person could do under this chapter, if he were of age and of sound mind; and he may elect, on behalf of such ward, to take the estate when the same cannot be divided without injury, and make payments therefor on behalf of such ward. [S. L. 1886, ch. 60, § 630. R. S. O., § 5772.]

Powers of foreign guardian.

SEC. 2979. A person appointed according to the laws of any other state or country, to take charge of the estate of an idiot or insane person not a resident of this territory, may upon being duly authorized in this territory to take charge of such estate, situate in this territory, act in the partition of such estate to the same extent that the guardian of an idiot or insane person is authorized to do by the last section. [S. L. 1886, ch. 60, § 631. R. S. O., § 5773.]

Actions by one parcener against another.

SEC. 2980. One tenant in common, or co-parcener, may recover from another his share of rents and profits received by such tenant in common, or co-parcener from the estate, according to the justice and equity of the case; and one parcener may maintain an action of waste against another; but no parcener shall have or possess any priveleges over another, in any election, division, partition, or matter to be made or done, concerning lands which have descended. [S. L. 1886, ch. 60, § 632. R. S. O., § 5774.]

Partition of property of religious corporations.

SEC. 2981. When two or more religious denominations, or other societies or associations, have united in a corporation, and as such corporation acquire title to real estate in this territory, and subsequently agree to separate and form two or more separate corporations under the laws of the territory, either corporation, after such separate organization, may file its petition, under this chapter, for partition of such property so required and held. [S. L. 1886, ch. 60, § 633. R. S. O., § 5775.]

Partition of property of religious societies.

SEC. 2982. When two or more religious societies or congregations have, by gift or purchase, acquired land upon which to erect a house of public worship, and other buildings for church and school purposes, and for a cemetery, in common, and either of such societies or congregations desires to abandon the joint use of such house of public worship, or other erections, it may commence an action for the partition of the use of such common property, except the cemetery, which may continue to be used in common. [S. L. 1886, ch. 60, § 634. R. S. O., § 5776.]

Restrictions upon partition under last two sections.

SEC. 2983. If the court find that partition, in cases mentioned in the last section, can be made in such manner as to occasion no confusion or inconvenience to either party in the separate use of the common property, it may order partition thereof to be made; it shall specify in the judgment for what purpose partition of the use is made, and how and for what purpose the use of the premises allotted to each party shall be occupied; and in no case shall the same or any part thereof be occupied foi any other purpose than the erection of a house of worship and other erections connected therewith. [S. L. 1886, ch. 60, § 635. R. S. O., § 5777.]

Costs and expenses to be equitably taxed.

SEC. 2984. The court, having regard to the interest of the parties, and the benefit each may derive from a partition, and according to equity, shall tax the costs and expenses which accrue in the action, including reasonable counsel fees, which shall be paid to plaintiff's counsel, unless the court award some part thereof to other counsel for service in the case for the common benefit of all the parties; and execution may issue therefor as in other cases. [S. L. 1886, ch. 60, § 636. R. S. O., § 5778.]

CHAPTER 4.

REAL ACTIONS.

SUB-DIVISION 1. TO QUIET TITLE AND RECOVER POSSESSION.
SUB-DIVISION 2. OCCUPYING CLAIMANTS.
SUB-DIVISION 3. TO COMPLETE REAL CONTRACTS.
SUB-DIVISION 4. TO SELL ENTAILED AND OTHER ESTATES.

SUB-DIVISION 1. TO QUIET TITLE AND RECOVER POSSESSION.

SECTION.
2985. Actions to quiet title.
2986. Recoupment by vendee in action for purchase money.
2987. Petition in actions to recover realty.
2988. Answer in such actions.
2989. Petition in action against co-tenant.
2990. Recovery when right terminates during actions.
2991. Benefit of occupying claimant law.

Actions to quiet title.

SEC. 2985. An action may be brought by a person in possession, by himself or tenant, of real property, against any person who claims an estate, or interest therein, adverse to him, for the purpose of determining such adverse estate or interest. [S. L. 1886, ch. 60, § 637. R. S. O., § 5779.]

Recoupment by vendee in action for purchase money.

SEC. 2986. In actions for the recovery of purchase money of real estate, by vendor against vendee, it shall be competent for such vendee notwithstanding his continued possession, to set up by way of counter-claim, any breach of the covenants of title acquired by him from the plaintiff, and to make any person claiming an adverse estate, or interest therein, party to the action; and upon the hearing he shall be entitled to recoup against the plaintiff's demand the present worth of any existing lien or incumbrance thereon; and if the adverse estate or interest of the claimant is an estate in reversion, or remainder, or contingent upon a future event, the court may order the vendee, with his assent, to surrender the possession to his vendor upon the repayment of so much of the purchase money as has been paid thereon, with interest, or direct the payment of the purchase money claimed in the action, upon the plaintiff giving bond in double the amount thereof, with two or more sureties, to be approved by the court, for the payment of the same, with interest, if the defendant or his privies be subsequently evicted by reason of the defect. [S. L. 1886, ch. 60, § 638. R. S. O., § 5780.]

Petition in actions to recover realty.

SEC. 2987. In an action for the recovery of real property, it shall be sufficient if the plaintiff state in his petition that he has a legal estate therein, and is entitled to the possession thereof, describing the same as required by section twenty-four hundred and eighty-two, and that the defendant unlawfully keeps him out of the possession; and it shall not be necessary to state how the plaintiff's estate or ownership is derived. [S. L. 1886, ch. 60, § 639. R. S. O., § 5781.]

Answer in such actions.

SEC. 2988. It shall be sufficient, in such action, if the defendant in his answer deny generally the title alleged in the petition, or that he withholds the possession; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted; and when he does not defend for the whole premises, the answer shall describe the particular part for which defense is made. [S. L. 1886, ch. 60, § 640. R. S. O., § 5782.]

Petition in action against co-tenant.

SEC. 2989. In an action by a tenant in common of real property against a co-tenant, the plaintiff must state, in addition to what is required in section twenty-nine hundred and eighty-seven, that the defendant either denied the plaintiff's right, or did some act amounting to such denial. [S. L. 1886, ch. 60, § 641. R. S. O., § 5783.]

Recovery when right terminates during action.

Sec. 2990. In an action for the recovery of real property, when the plaintiff shows a right to recover at the time the action was commenced, but his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property. [S. L. 1886, ch. 60, § 642. R. S. O., § 5784.]

Benefit of occupying claimant law.

Sec. 2991. Parties in an action for the recovery of real property may avail themselves, if entitled thereto, of the benefits of the statutes for the relief of accupying claimants of land. [S. L. 1886, ch. 60, § 643. R. S. O., § 5785.]

SUB-DIVISION 2. OCCUPYING CLAIMANTS.

SECTION.
2992. When occupying claimant to be paid for improvements.
2993. Tax title sufficient to protect occupant.
2994. Entry of claim for improvements—Drawing jury.
2995. Duties of jury.
2996. Talesmen.
2997. Report of jury—New valuation.

SECTION.
2998. Judgment on report bars action for mesne profits.
2999. Proceedings if report is for occupying claimant.
3000. Writ of possession to issue on payment for improvements.
3001. If deed tendered and payment refused writ to issue.
3002. When occupant may bring action for title.

When occupying claimant to be paid for improvements.

Sec. 2992. A person in the quiet possession of land or tenements, and claiming to own the same, who has obtained title to and is in possession of the same, without fraud or collusion on his part, shall not be evicted or turned out of possession by any person who sets up and proves an adverse and better title, until the occupying claimant, or his heirs, are fully paid the value of all lasting and valuable improvements made on the land by him, or by the person under whom he holds, previous to receiving actual notice by the commencement of suit on such adverse claim, whereby such eviction may be affected, unless such occupying claimant refuse to pay to the person so setting up and proving an adverse and better title, the value of the land, without improvements made thereon as aforesaid, upon demand of the successful claimant, or his heirs, as hereinafter provided, when:

First—Such occupying claimant holds a plain and connected title in law or equity, derived from the records of a public office; or,

Second—Holds the same by deed, devise, descent, contract, bond or agreement, from and under a person claiming title as aforesaid, derived from the records of a public office, or by deed duly authenticated and recorded; or,

Third—Under sale on execution, against a person claiming title as aforesaid, derived from the records of a public office, or by deed duly authenticated and recorded; or,

Fourth—Under a sale for taxes authorized by the laws of this territory; or,

Fifth—Under a sale and conveyance made by executors, administrators or guardians, or by any other person or persons, in pursuance of an order of court, or decree in chancery, where lands are or have been directed to be sold. [S. L. 1886, ch. 60, § 644. R. S. O., § 5786.]

Tax title sufficient to protect occupant.

Sec. 2993. The title by which the successful claimant succeeds against the occupying claimant, in all cases of lands sold for taxes by virtue of any law of this territory, shall be considered an adverse and better title, under the provisions of the last section, whether it be the title under which the taxes were due, and for which the land was sold, or any other title or claim; and the occupying claimant holding possession of land so sold for taxes, having the deed of a collector of taxes or county treasurer therefor, or a certificate of such sale from a collector of taxes, or a county treasurer, or claiming under the person who holds such deed or certificate, shall be considered as having sufficient title to the land to demand the value of improvements under the provisions of the last section. [S. L. 1886, ch. 60, § 645. R. S. O., § 5787.]

Entry of claim for improvements—Drawing jury.

SEC. 2994. The court rendering judgment against the occupying claimant, in any case provided for by this sub-division, shall, at the request of either party, cause a journal entry thereof to be made; the sheriff and clerk of the court, when thereafter required by either party, shall meet and draw from the jury box the names of twelve men returned to serve as jurors, in the same manner as they are required by law to draw a jury in other cases. [S. L. 1886, ch. 60, § 646. R. S. O., § 5788.]

Duties of jury.

SEC. 2995. The jury named in the order shall immediately upon being notified by the sheriff proceed to view the premises in question, and then and there on oath, to be administered by any competent authority, assess the value of all lasting and valuable improvements made on the lands previous to the party receiving actual notice as aforesaid of the adverse claim, and shall also assess the damages, if any, which the land has sustained by waste, together with the net annual value of the rents and profits of the land which the occupying claimant has received, after having received notice of the plaintiff's title by the service of a summons. and deduct the amount thereof from the estimated value of such lasting improvements, and the jury shall also assess the value of the land at the time the judgment was rendered, without the improvements made thereon or damages sustained by waste. [S. L. 1886, ch. 60, § 647. R. S. O., § 5789.]

Talesmen.

SEC. 2996. If any juror named in the order is absent from the county, of kin to either party, or from any other cause disqualified or unable to serve upon the jury, the sheriff may summon a talesman as in other cases, who shall be qualified and shall serve as if originally drawn and named in the order. [S. L. 1886, ch, 60, § 648. R. S. O., § 5790.]

Report of jury—New valuation.

SEC. 2997. The jury shall sign and seal the assessments and valuations and deposit the same with the clerk of the court before the first day of the next term of the court after the order is made; if either party be aggrieved by any such assessment or valuation he may apply to the court at the term to which the proceedings are returned, and the court may, upon good cause shown, set aside such assessment or valuation, order a new valuation and appoint another jury, as hereinbefore provided, which shall proceed in the same manner as hereinbefore directed. [S. L. 1886, ch. 60, § 649. R. S. O., § 5791.]

Judgment on report bars action for mesne profits.

SEC. 2998. If the jury report a sum in favor of the plaintiff in ejectment on the assessment and valuation of the valuable and lasting improvements, the assessment of damages for waste and the net annual value of the rents and profits, the court shall render a judgment therefor, without pleadings, and issue execution thereon as in other causes, or if no such excess be reported, then, and in either case, the plaintiff in ejectment shall be thereby barred from having or maintaining an action for mesne profits. [S. L. 1886, ch. 60, § 650. R. S. O., § 5792.]

Proceedings if report is for occupying claimant.

SEC. 2999. If the jury report a sum in favor of the occupying claimant on the assessment and valuation of the lasting and valuable improvements, deducting therefrom the damages, if any, sustained by waste, together with the net annual value of the rents and profits which the defendant has received after the commencement of the action, the successful claimant or his heirs, or if they are minors, their guardians may either demand of the occupying claimant the value of the land without the improvements so assessed, and tender a deed of the land to the occupying claimant, or may pay the occupying claimant the sum so allowed by the jury in his favor, within reasonable time, as the court shall allow. [S. L. 1886, ch. 60, § 651. R. S. O., § 5793.]

Writ of possession to issue on payment for improvements.

SEC. 3000. If the successful claimant or his heirs or their guardians elect to pay and do pay to the occupying claimant, the sum reported in his favor by the jury, within the time allowed by the court, then a writ of possession shall issue in favor of the successful claimant, his heirs or their guardians. [S. L. 1886, ch. 60, § 652. R. S. O., § 5794.]

If deed tendered and payment refused writ to issue.

SEC. 3001. If the successful claimant, his heirs or their guardians, elect to receive the value of the land without improvements, so assessed to be paid by the occupying claimant, and tender a general warranty deed of the land conveying such adverse or better title, within the time allowed by the court for the payment of money, and the occupying claimant refuse or neglect to pay the same to the successful claimant, his heirs or their guardians, within the time limited, a writ of possession shall be issued in favor of the successful claimant, his heirs or their guardians. [S. L. 1886, ch. 60, § 653. R. S. O., § 5795.]

When occupant may bring action for title.

SEC. 3002. The occupying claimant, or his heirs, shall not be evicted from the possession of such land, except as is provided in the two preceding sections, where an application is made for the value of improvements, and in all cases where the occupying claimant, or his heirs, pay into court the value of the land, without improvements, within the time allowed by the court, when an election has been made by the successful claimant, his heirs or their guardians, to surrender lands under the provisions of this sub-division, such occupant or his heirs may, at any time after such payment is made, bring an action in the court where judgment of eviction was obtained, and obtain judgment for the title of the land, if the same had not been previously conveyed to such occupant as aforesaid. [S. L. 1886, ch. 60, § 654. R. S. O., § 5796.]

SUB-DIVISION 3. TO COMPLETE REAL CONTRACTS.

SECTION.
3003. Completion of contract by survivors.
3004. Requisites of petition.
3005. Judgment—Deed.
3006. Completion of contract by personal representatives.

SECTION.
3007. Judgment—Deed.
3008. Heirs and devisees may ask completion.

Completion of contract by survivors.

SEC. 3003. When two or more persons who own an interest in land become bound in writing for the sale and conveyance thereof, and one of them dies before the land is conveyed, the survivor or survivors may, by petition against the purchaser, and the heirs or devisees of such deceased party be authorized to complete such contract. [S. L. 1886, ch. 60, § 655. R. S. O., § 5797.]

Requisites of petition.

SEC. 3004. The petition must set forth the names of all the contracting parties, describe the lands contracted for, state the time the contract was made, that the contract has been fully performed by the purchaser, and have annexed a copy of the contract. [S. L. 1886, ch. 60, § 656. R. S. O., § 5798.]

Judgment—Deed.

SEC. 3005. If the court find the allegations of the petition to be true; it may make an order authorizing and empowering the survivors to complete the contract by conveying the land; and the deed shall recite the order and shall convey as complete and perfect a title and have the same effect as if executed by all the owners. [S. L. 1886, ch. 60, § 657. R. S. O., § 5799.]

Completion of contract by personal representatives.

SEC. 3006. When a person who has entered into a written contract for the sale and conveyance of an interest in land dies before the completion thereof, and his executor, administrator or other legal representative desires to complete the contract, he may file a petition therefor in the district court or probate court of the county in which the land, or any part thereof, is situate; if the petition be filed in the probate court, service may be made therein as in civil actions, and the heirs at law, devisees, or other legal representatives of the deceased vender, when not plaintiffs, must be made defendants in the action. [S. L. 1886, ch, 60, § 658. R. S. O., § 5800.]

For proceedings in probate court under this section, see § 2095.

Judgment—Deed.

SEC. 3007. The court, after causing to be secured to andfor the benefit of the estate of the deceased, its just part and proportion of the consideration of the contract, may authorize the executor, administrator or other legal representative to complete the contract, and to execute a deed for and on behalf of the heirs at law to the purchaser, which shall recite the order, and be as binding on the heirs at law, and all other persons interested, as if it had been made by the deceased in his lifetime. [S. L. 1886, ch. 60, § 659. R. S. O., § 5801.]

Heirs and devisees may ask completion.

SEC. 3008. The heirs at law, or devisees, of a person who purchased an interest in land by written contract, and died before conveyance thereof to him, may compel such conveyance as the deceased might have done. [S. L. 1886, ch. 60, § 660. R. S. O., § 5802.]

SUB-DIVISION 4. TO SELL ENTAILED AND OTHER ESTATES.

SECTION.
3009. Who may obtain sale.
3010. Requisites of petition—Parties.
3011. Order of sale, and effect of sale.
3012. Sale by consent of parties.
3013. Confirmation of sale—Deed.
3014. Proceeds to descend, etc., like estate sold.
SECTION.
3015. Investment of proceeds.
3016. Income, taxes and expenses.
3017. Such estate may be leased.
3018. Sale of property given for religious use.
3019. Necessary parties to proceeding.

Who may obtain sale.

SEC. 3009. District courts in an action by the tenant in tail, or for life, or by the grantee or devisee of a qualified or conditional fee, or of any other qualified, conditional, or determinable interest, or by a person claiming under such tenant, grantee, or devisee, or by the trustees or beneficiaries, if the estate is held in trust, may authorize the sale of any estate, whether the same was created by will, deed or contract, or came by descent, when satisfied that a sale thereof would be for the benefit of the person holding the first and present estate, interest, or use, and do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion, or remainder. [S. L. 1886, ch. 60, § 661. R. S. O., § 5803.]

Requisites of petition—Parties.

SEC. 3010. The petition shall contain a description of the estate to be sold, a clear statement of the interest of the plaintiff therein, and a copy of the will, deed, or other instrument of writing by which the estate is created, all persons in being who are interested in the estate, or who may, by the terms of the will, deed, or other instrument, creating the entailment or other estate, thereafter become interested therein as heir, reversioner, or otherwise, shall be made parties to the petition; and if the names of any persons who ought to be made parties are unknown to the plaintiff, or if the residence of any such party is unknown to the plaintiff, the fact shall be verified by the affidavit of the plaintiff, and the sale may be ordered notwithstanding such names and residences are unknown. [S. L. 1886, ch. 60, § 662. R. S. O., § 5804.]

Order for sale and effect of sale.

SEC. 3011. If, upon the hearing of the petition, it be made to appear to the court, by satisfactory proof, that a sale of the estate would be for the benefit of the tenant in tail or for life, and do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion or remainder, the court shall direct a sale of the estate to be made, and the manner thereof, and shall appoint some suitable person or persons to make the same; and such sale shall vest the estate sold in the purchaser, freed from the entailment, limitation or condition. [S. L. 1886, ch. 60, § 663. R. S. O., § 5805.]

Sale by consent of parties.

SEC. 3012. All persons in interest may appear voluntarily and consent in writing to such sale; and testamentary guardians, and guardians appointed by the court of probate, may assent, in the place of their wards, to the sale. [S. L. 1886, ch. 60, § 664. R. S. O., § 5806.]

Confirmation of sale—Deed.

SEC. 3013. All such sales shall be reported to the court authorizing the same; and if, on examination thereof, it appear that the sale was fairly conducted and made, and that the price obtained is the reasonable value of the estate sold, the court shall confirm the sale, and direct a deed of conveyance of the premises sold to be made to the purchaser, on payment of the purchase money, or on securing the payment thereof in such manner as shall be approved by the court. [S. L. 1886, ch. 60, § 665. R. S. O., § 5807.]

Proceeds to descend, etc., like estate sold.

SEC. 3014. All money arising from sales under this sub-division shall, for purposes of descent, succession, reversion or remainder, have the same character, and be governed by the same principles, as the estate sold, and shall pass according to the terms of the deed, will, or other instrument creating the estate. [S. L. 1886, ch. 60, § 666. R. S. O., § 5808.]

Investment of proceeds.

SEC. 3015. Money arising from such sales shall under the direction and approval of court, be invested in the certificates of the funded debt of this territory or of the United States, or in bonds secured by mortgage or unencumbered real estate, situate in the proper county, of double the value of the money secured thereby, exclusive of buildings and other improvements, and of timber, mines and minerals; or the court may order the same to be re-invested in other real estate within this territory, under such restrictions as it may prescribe, which investments shall be reported to the court, and subject to its approval and confirmation; the real estate in which the money is reinvested shall, for purposes of descent, succession, reversion or remainder, have the same character, and be governed by the same principles, as the estate sold, and shall pass according to the terms of the deed, will or other instrument creating the estate sold; the court shall appoint competent trustees to invest the money and manage the same, who shall from time to time report to the court their proceedings, and the condition of the fund; and the court shall require of such trustees security for the faithful discharge of their duty; may from time to time require additional security; may remove such trustees for cause or reasonable apprehension thereof; and may accept the resignation of a trustee and fill a vacancy by a new appointment. [S. L. 1886, ch. 60, § 667. R. S. O., § 5809.]

Income, taxes and expenses.

SEC. 3016. The net income accruing from sales authorized by this subdivision shall be paid to the person or persons who would be entitled to the use or income of the estate, were the same unsold; and all taxes, and the expenses of the investment and management of the fund shall be paid by the person or persons entitled to the income thereof. [S. L. 1886, ch. 60, § 668. R. S. O., § 5810.]

Such estate may be leased.

SEC. 3017. Upon like proceedings the court may direct that such estates be leased for a term of years, renewable or otherwise, as may appear most beneficial, and upon such terms as appear just and equitable; and the rents and profits shall be paid to the person or persons who might otherwise be entitled to the use and occupancy of the estate, or the income thereof. [S. L. 1886, ch. 60, § 669. R. S. O., § 5811.]

Sale of property given for religious use.

SEC. 3018. When any real estate, except burial grounds or a cemetery, has been donated, bequeathed or otherwise entrusted to or purchased by any person or trustee, for any public religious use, but not to or for the use of any specific or particular religious society or denomination, or when the same has been donated, bequeathed, or entrusted to, or purchased by a particular religious society or denomination, and has been abandoned for such use, the district court of the county in which the same is located, may, upon good cause shown, upon the petition of any citizen of the vicinity, make an order for the sale of such property, whether the same has been built upon, or otherwise improved or not, and may make such order as to costs, and such disposition of the proceeds of the sale to such religious or other public use, as shall be just, proper and equitable; and the purchaser thereof shall be invested with as full and complete a title thereto as the character of the original grant for such religious use will allow. [S. L. 1886, ch. 60, § 670. R. S. O., § 5812.]

Necessary parties to proceeding.

SEC. 3019. All persons who have a vested, contingent or reversionary interest in such real estate, and the trustees or other temporal officers of any religious society then using the same, shall be made parties to the petition and be notified of the filing and pendency thereof, as in a civil action. [S. L. 1886, ch. 60, § 671. R. S. O., § 5813.]

CHAPTER 5.

REPLEVIN.

SECTION.
3020. Action of replevin.
3021. Affidavit for order of delivery.
3022. Order for delivery.
3023. Return day of order.
3024. Execution of order.
3025. Undertaking on replevin.
3026. Sheriff to retain possession of relics, etc.
3027. Appraisement.
3028. When property returned to defendant—Liability of sheriff.
3029. Exception to sureties—Justification.

SECTION.
3030. Proceedings when plaintiff fails to prosecute.
3031. Assessment of plaintiff's damages.
3032. Finding for defendant—Damages.
3033. Proceedings when property not taken.
3034. Several orders for delivery may be issued.
3035. Authority of officer in executing order.
3036. Action on undertaking.
3037. When order may be set aside at clerk's costs.

Action of replevin.

SEC. 3020. The possession of specific personal property may be recovered in an action as provided in this chapter. [S. L. 1886, ch. 60, § 672. R. S. O., § 5814.]

Affidavit for order of delivery.

SEC. 3021. An order for the delivery of property to the plaintiff shall be issued by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney showing:

First—A description of the property claimed;

Second That the plaintiff is the owner of the property or has an interest therein, and if the ownership or interest is special or partial the fact shall be stated;

Third—That the property is wrongfully detained by the defendant;

Fourth—That it was not taken on process issued against the plaintiff, nor for a tax, or if taken on such process, that the property was exempt from execution expressly, or upon demand or selection by the plaintiff. [S. L. 1886, ch. 60, § 673. R. S. O., § 5815.]

Order for delivery.

SEC. 3022. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff, and it shall contain the names of the parties and the court in which the action is brought, and the sheriff shall be thereby commanded to take the property and deliver it to the plaintiff and make return of the order on the day to be named therein. [S. L. 1886, ch. 60, § 674. R. S. O., § 5816.]

Return day of order.

SEC. 3023. The return day of the order of delivery shall be the same as that of the summons. [S. L. 1886, ch. 60, § 675. R. S. O. § 5817.]

Execution of order.

SEC. 3024. The sheriff shall execute the order by taking the property therein mentioned, and he shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence. [S. L. 1886, ch. 60, § 676. R. S. O., § 5818.]

Undertaking on replevin.

SEC. 3025. The sheriff shall, except as provided in the next section, deliver the property so taken to the plaintiff, his agent or attorney, when there is executed by sufficient surety of the plaintiff a written undertaking to the defendant, in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him, and the undertaking shall be returned with the order. [S. L. 1886, ch. 60, § 677. R. S. O., § 5819.]

Sheriff to retain possession of relics, etc.

SEC. 3026. When the property replevied consists of an heirloom, personal keepsake, or other article, the value of which consists in whole or in part of its being a relic, model, gift, family picture, painting or rare production of art or nature, and not wholly in its general marketable character, the sheriff shall retain and safely keep the same, subject to the order of the court; if the defendant, his agent or attorney, within ten days after the same is replevied, serve a written notice upon the officer that he will demand the return of the same upon the final trial of the case, and that he will, at the next term of the court, move for an order requiring the officer to retain the property, subject to the final order of the court; and if the defendant fail to give the notice aforesaid, or the court, upon application of either party, refuse to order the officer to retain the property, for the reason that it does not belong to one or more of the kinds of personal property aforesaid, the officer shall deliver the property to the plaintiff, his agent or attorney, upon the execution of an undertaking, as provided in the last section, to be filed with the clerk of the court within ten days from the expiration of the time to give the notice, or in case the notice is given, within ten days after the refusal of the court to order the officer to retain the property. [S. L. 1886, ch. 60, § 678. R. S. O., § 5820.]

Appraisement.

SEC. 3027. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff shall swear truly to assess the value thereof. [S. L. 1886, ch. 60, § 679. R. S. O., § 5821.]

When property returned to defendant—Liability of sheriff.

SEC. 3028. If the undertaking required in section three thousand and twenty-five be not given within five days after the property is taken, or after the right first accrues to the plaintiff, to receive the property from the officer on executing the proper undertaking, the officer shall return the property to the defendant; and if the officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security, within the time and in the manner aforesaid, or if he take insufficient security, he shall be liable for damages. [S. L. 1886, ch. 60, § 680. R. S. O., § 5822.]

Exception to sureties—Justification.

SEC. 3029. The defendant may, within twenty-four hours from the time the undertaking referred to in the last section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the surety, and if he fail to do so, he shall be deemed to have waived all objections to them; when the defendant excepts, the surety must justify upon notice as bail on arrest; the officer shall be responsible for the sufficiency of his surety until the objection thereto is waived as above provided, or until they justify; and the property shall be delivered to the plaintiff when the undertaking required by section three thousand and twenty-five is given. [S. L. 1886, ch. 60, § 681. R. S. O., § 5823.]

Proceedings when plaintiff fails to prosecute.

SEC. 3030. When judgment is rendered against the plaintiff on demurrer, or he fails to prosecute his action to final judgment, the court shall, on application of the defendant, assess to defendant proper damages, including damages for the right of property or possession, or both, if he prove himself entitled thereto, or cause the same to be done by a jury, for which, with costs of suit, the court shall render judgment for the defendant. [S. L. 1886, ch. 60, § 682. R. S. O., 5824.]

Assessment of plaintiff's damages.

SEC. 3031. When the property is delivered to the plaintiff, or remains in the hands of the sheriff, as provided in section three thousand and twenty-six, if the jury, upon issue joined, find for the plaintiff, and upon inquiry of damages upon a default, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the court shall render judgment for the plaintiff. [S. L. 1886, ch. 60, § 683. R. S. O., 5825.]

Finding for defendant—Damages.

SEC. 3032. When the property is deliverd to the plaintiff, or remains in the hands of the sheriff, as provided in section three thousand and twenty-six, if the jury, upon issue joined, find for the defendant, they shall also find whether the defendant had the right of property or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess to him such damages as they think right and proper, for which, with costs of suit, the court shall render judgment for the defendant against the plaintiff and his sureties. [S.L. 1886, ch. 60, § 684. R. S. O., 5826.]

Proceedings when property not taken.

SEC. 3033. When the property claimed is not taken, or is returned to the defendant by the sheriff for the want of the undertaking required by section three thousand and twenty-five, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking, the plaintiff shall pay all costs made by taking the same. [S. L. 1886, ch. 60, § 685. R. S. O., § 5827.]

Several orders for delivery may be issued.

SEC. 3034. An order for the delivery of the property claimed may be directed to any county, and several orders may issue at the same time, or successively at the option of the plaintiff, but only one of them shall be taxed in the costs, unless otherwise ordered by the court. [S. L. 1886, ch. 60, § 686. R. S. O., § 5828.]

Authority of officer in executing order.

SEC. 3035. The officer in the execution of the order of delivery, may break open any building or inclosure in which the property claimed, or any part thereof, is concealed, but not until he has been refused an entrance into the building or enclosure, and the delivery of the property, after having demanded the same. [S. L. 1886, ch. 60, § 687. R. S. O., § 5829.]

Action on undertaking.

SEC. 3036. No suit shall be instituted on the undertaking given under section three thousand and twenty-five until an execution issued on a judgment in favor of the defendant in the action has been returned unsatisfied. [S. L. 1886, ch. 60, § 688. R. S. O., § 5830.]

When order may be set aside at clerk's costs.

SEC. 3037. An order for the delivery of property issued under section three thousand and twenty-one, without the affidavit required thereby, shall be set aside at the cost of the clerk who issued it, and such clerk, as well as the plaintiff, shall be liable in damages to the party injured. [S. L. 1886, ch. 60, § 689. R. S. O., § 5831.]

CHAPTER 6.

SURETIES, RIGHTS AND REMEDIES OF.

SECTION.
3038. Sureties may require creditors to sue.
3039. Representatives of sureties to have same right.
3040. Limitation on last two sections.
3041. Rights of surety on paying judgment.
3042. Sureties of county officers may ask to be discharged.
3043. Duty of commissioners in such case.
3044. Sureties of constable, etc., may ask to be discharged.
3045. Proceedings in such case.
SECTION.
3046. Application by surety of school district treasurer.
3047. Proceedings by commissioners in such case.
3048. Application by surety of other officers.
3049. Proceedings by commissioners in such case.
3050. Surety may compel principal to pay debt.
3051. Action by surety for indemnity before debt is due.
3052. Surety may obtain provisional remedies.

Sureties may require creditors to sue.

SEC. 3038. A person bound as surety in a written instrument for the payment of money, or other valuable thing, may, if right of action accrues thereon, require his creditor by a notice in writing, to commence an action on such instrument forthwith, against the principal debtor; and unless the creditor commence such action within a reasonable time thereafter, and proceed with due diligence, in the ordinary course of law, to recover judgment against the principal debtor for the money or other valuable thing due thereby, and to make by execution the amount thereof, the creditor, or the assignee of such instrument so failing to comply with the requisition of such surety shall thereby forfeit the right which he would otherwise have to demand, and receive of such surety, the amount due thereon. [S. L. 1886, ch. 60, § 690. R. S. O., § 5833.]

Representatives of sureties to have same right.

SEC. 3039. The executor or administrator of a surety so bound may, in like manner make such requisition of the creditor, or his executor or administrator, as provided in the preceding section; and in case of failure of the creditor, or his executor or administrator, to proceed as therein required, the executor or administrator, if he make the requisition, shall have the same relief as is therein provided for a surety. [S. L. 1886, ch. 60, § 691. R. S. O., § 5834.]

Limitation on last two sections.

SEC. 3040. Nothing in the last two sections contained shall be so construed as to affect bonds required by law to be given by guardians, executors, administrators, trustees of an express trust, public officers, or any bond or undertaking required by law to be given in an action or legal proceeding in any court in this territory. [S. L. 1886, ch. 60, § 692. R. S. O., § 5835.]

Rights of surety on paying judgment.

SEC. 3041. When the surety on a judgment, who is certified therein to be such, or his personal representative pays the judgment, or any part thereof, he shall, to the extent of such payment, have all the rights and remedies against the principal debtor that the plaintiff had at the time of such payment; and proceedings to revive the judgment shall be as provided in section twenty-seven hundred and fourteen, and shall be in the name of such surety or representative; but the plaintiff in the original action shall not be liable for any costs therein. [S. L. 1886, ch. 60, § 693. R. S. O., § 5836.]

Sureties of county officers may ask to be discharged.

SEC. 3042. A surety of a sheriff, county clerk, probate judge, county treasurer, clerk of the district court or coroner, may at any time notify the county commissioners, by giving at least five days written notice that he is unwilling to continue as surety for such officer, and will, at a time to be therein named, make application to the commissioners to be released from further liability upon his bond; and he shall also give at least three days written notice to such officer of the time and place at which such application will be made. [S. L. 1886, ch. 60, § 694. R. S. O., § 5837.]

Duty of commissioners in such case.

SEC. 3043. The board of county commissioners, upon such notice being given, shall hear the application, and if, in their opinion, there is good reason therefor, shall require such officer to give a new bond, conditioned according to law, to their satisfaction, within such reasonable time as they may direct; and if such officer fail to execute such bond, the office shall be deemed vacant, and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of the time allowed therefor, and shall be liable only for the official acts of such officer from the time of the execution of the original bond to the filing of the second bond, or the expiration of the time allowed therefor; and the costs of such application shall be paid by the surety who makes the same. [S. L. 1886, ch. 60. § 695. R. S. O., § 5838.]

Sureties of constable, etc., may ask to be discharged.

SEC. 3044. If a constable or the marshal of a municipal corporation neglect or refuse on demand made for that purpose, by a person entitled thereto, his agent or attorney, to pay all money by him received in his official capacity for the use of such person, a surety of such constable or marshal may give notice to the county commissioners, or the council of the corporation, in which such constable or marshal resides, of his refusal or neglect to pay over money by him collected by virtue of his office, and that he is unwilling to continue as his surety. [S. L. 1886, ch. 60, § 696. R. S. O., § 5839.]

Proceedings in such case.

SEC. 3045. The commissioners or council, as the case may be, upon such notice being given, shall immediately inform the constable or marshal, in writing, of the refusal of his surety to continue as such, and that he is required to give a new undertaking, conditioned according to law; if such constable or marshal give such undertaking, to the satisfaction of the commissioners or council, within ten days after receiving such notice, the sureties upon the first undertaking shall be released and exonerated from all further liability thereon; and if the constable or marshal fail to give a new undertaking within ten days after having received such written notice, such failure shall be deemed and taken as a resignation of his office, and the commissioners or council shall proceed to fill such vacancy as is provided in other cases. [S. L. 1886, ch. 60, § 697. R. S. O., § 5840.]

Application by surety of school district treasurer.

SEC. 3046. A surety of the treasurer of school funds in any school district, organized under the provisions of law, may at any time notify the board of county commissioners of the proper county, by giving at least five days notice in writing, that he is unwilling to continue as surety for such treasurer, and will, at a time therein named, make application to the board of county commissioners to be released from further liability upon his bond; and he shall also give at least three days notice in writing to such treasurer, of the time and place at which the application will be made. [S. L. 1886, ch. 60, § 698. R. S. O., § 5841.]

Proceedings by commissioners in such case.

SEC. 3047. The board of county commissioners, upon such notice being given, shall hear the application, and if in their opinion there is good reason therefor, shall require the treasurer to give a new bond, conditioned according to law and to the satisfaction of the board, within such time as they may direct, and if the treasurer fail to execute such bond, the office shall be deemed vacant and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond or the expiration of the time allowed therefor; and the cost of such application shall be paid by the person making the same. [S. L. 1886, ch. 60, § 699. R. S. O., § 5842.]

Application by surety of other officers.

SEC. 3048. A surety of a justice of the peace, constable, county treasurer or any county officer may at any time notify the county commissioners, by giving at least five days notice in writing that he is unwilling to continue as surety for such officer, and will at a time therein named make application to the county commissioners to be released from further liability upon his bond; and he shall give at least three days notice in writing to such officer of the time and place at which the application will be made. [S. L. 1886, ch. 60, § 700. R. S. O., § 5843.]

Proceedings by commissioners in such case.

SEC. 3049. The county commissioners, upon such notice being given, shall hear the application, and if they find that such officer neglects or refuses, on demand by a person entitled thereto, his agent or attorney, to pay over all money by him received in his official capacity, for the use of such person, or if in their opinion there is other good reason therefor, they shall require such officer to give a new bond, conditioned according to law and to the satisfaction of the county commissioners, within such time as they may direct, and if the officer fail to execute such bond the office shall be deemed vacant and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond or the expiration of the time allowed therefor, but they shall be liable only for the official acts of such officer from the time of the execution of the original bond to the filing of the new bond or the expiration of the time allowed therefor, and the costs of the application shall be paid by the person making the same. [S. L. 1886, ch. 60, § 701. R. S. O., § 5844.]

Surety may compel principal to pay debt.

SEC. 3050. A surety may maintain an action against his principal to compel him to discharge the debt or liability for which the surety is bound, after the same becomes due. [S. L. 1886, ch. 60, § 702. R. S. O., § 5845.]

Action by surety for indemnity before debt is due.

SEC. 3051. A surety may maintain an action against his principal to obtain indemnity against the debt or liability for which he is bound before it is due whenever any of the grounds exist upon which, by the provisions of this title, an order may be made for arrest or for an attachment. [S. L. 1886, ch. 60, § 703. R. S. O., § 5846.]

Surety may obtain provisional remedies.

SEC. 3052. In such action the surety may obtain any of the provisional remedies mentioned in division six of this title, upon the grounds and in the manner therein provided. [S. L. 1886, ch. 60, § 704. R. S. O., § 5847.]

CHAPTER 7.

TAXES AND ASSESSMENTS, RELIEF AGAINST ILLEGAL.

SECTION.
3053. Jurisdiction of district court.
3054. Parties to actions to enjoin levy.
SECTION.
3055. Parties to actions to enjoin collection.
3056. Tender of taxes due—Undertaking.

Jurisdiction of district courts.

SEC. 3053. District courts shall have jurisdiction to enjoin the illegal levy of taxes and assessments, or the collection of either, and of actions to recover back such taxes or assessments as have been collected, without regard to the amount thereof; but no recovery shall be had unless the action be brought within one year after the taxes or assessments are collected. [S. L. 1886, ch. 60, § 705. R. S. O., § 5848.]

Parties to actions to enjoin levy.

SEC. 3054. Actions to enjoin the illegal levy of taxes and assessments must be brought against the corporation or person for whose use and benefit the levy is made; and if the levy would go upon the tax list, the county treasurer must be joined in the action. [S. L. 1886, ch. 60, § 706. R. S. O., § 5849.]

Parties to actions to enjoin collection, etc.

SEC. 3055. Actions to enjoin the collection of taxes and assessments must be brought against the officer whose duty it is to collect the same; actions to recover back taxes and assessments must be brought against the officer who made the collection, or, if he is dead, against his personal representative; and when they were not collected on the tax list, the corporation which made the levy must be joined in the action; *Provided*, That when the money derived from said taxes or assessment has been actually paid over to any municipal corporation for whose use and benefit it was levied or collected, then an action shall be brought against said municipal corporation to recover said taxes or assessments. [S. L. 1886, ch. 60, § 707. R. S. O., § 5850.]

Tender of taxes due—Undertaking.

SEC. 3056. If the plaintiff in an action to enjoin the collection of taxes or assessments admit a part thereof to have been legally levied, he must first pay or tender the sum admitted to be due; if an order of injunction be allowed an undertaking must be given as in other cases; and the injunction shall be a justification of the officer charged with the collection of such taxes or assessments for not collecting the same. [S. L. 1886, ch. 60, § 708. R. S. O., § 5851.]

CHAPTER 8.

TO CONTEST WILLS.

SECTION.
3057. Who may contest will.
3058. Necessary parties to action.
3059. Certificate to probate court.
3060. Issue, verdict and judgment.
3061. Order of probate to be *prima facie* evidence.
SECTION.
3062. When testimony given on probate is competent.
3063. Conduct of the trial.
3064. Appeal to supreme court.
3065. Limitation—Saving to persons under disability.

Who may contest will.

SEC. 3057. A person interested in a will or codicil admitted to probate in the probate court, or district court on appeal, may contest the validity thereof in a civil action in the district court, in the county in which such probate was had. [S. L. 1886, ch. 60, § 709. R. S. O., § 5858.]

Necessary parties to action.

SEC. 3058. All the devisees, legatees and heirs of the testator and other interested persons, including the executor or administrator, must be made parties to the action. [S. L. 1886, ch. 60, § 710. R. S. O., § 5859.]

Certificate to probate court.

SEC. 3059. Upon the filing of the petition the clerk shall certify that fact to the probate court in which the will is recorded, and the probate judge shall thereupon certify to the district court all proceedings had in the probate court in relation thereto, together with all original papers and documents filed in the probate court in connection therewith. [S. L. 1886, ch. 60, § 711. R. S. O., § 5860.]

Issue, verdict and judgment.

SEC. 3060. An issue shall be made up either in the pleadings or by an order on the journal, whether the writing produced is the last will or codicil of the testator, or not, which shall be tried by a jury, and unless a new trial be granted, or the cause be appealed to the supreme court, the verdict shall be conclusive, and the court shall enter judgment thereon, and for costs of the action. [S. L. 1886, ch. 60, § 712. R. S. O., § 5861.]

Order of probate to be prima facie evidence.

SEC. 3061. On the trial of such issue, the order of probate shall be *prima facie* evidence of the due attestation, execution and validity of the will or codicil. [S. L. 1886, ch. 60, § 713. R. S. O., § 5862.]

When testimony given on probate is competent.

SEC. 3062. A certified copy of the testimony of such of the witnesses examined upon the probate as are out of the jurisdiction of the court, dead or have become incompetent since the probate, shall be admitted in evidence on the trial. [S. L. 1886, ch. 60, § 714. R. S. O., § 5863.]

Conduct of the trial.

SEC. 3063. The party sustaining the will shall be entitled to open and close the evidence and argument; he shall offer the will and probate, and rest; the opposite party shall then offer his evidence; the party sustaining the will shall then offer his other evidence; and rebutting testimony may be offered as in other cases. [S. L. 1886, ch. 60, § 715. R. S. O., § 5864.]

Appeal to supreme court.

SEC. 3064. An appeal may be had from the judgment of the district court to the supreme court, as in other cases of appeal, and the supreme court may render final judgment therein, or remand the case with directions to the court below for a new trial. [S. L. 1886, ch. 60, § 716. R. S. O., § 5865.]

Limitation—Saving to persons under disability.

SEC. 3065. No action shall be commenced to contest a will or codicil unless within two years after the same is admitted to probate; and infants, married women, or persons absent from the territory, shall not be concluded by the verdict and judgment in any such action; but such persons may, within two years after their respective disabilities are removed, and not thereafter, commence an action and contest the will, as hereinbefore provided. [S. L. 1886, ch. 60, § 717. R. S. O., § 5866.]

CHAPTER 9.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SECTION.
3066. Perpetuation of testimony.
3067. Requisites of petition.
3068. Order for examination.
3069. Cross interrogatories.
SECTION.
3070. Taking and filing testimony.
3071. Approval of depositions—When competent evidence.
3072. Applicant to pay costs.

Perpetuation of testimony.

SEC. 3066. The testimony of a witness may be perpetuated as herein provided. [S. L. 1886, ch. 60, § 718. R. S. O., § 5873.]

Requisites of petition.

SEC. 3067. The applicant shall file in the office of the clerk of the district court a petition, to be verified, in which shall be set forth specifically the subject matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant, and if not known, such general description as he can give of such persons, as heirs, devisees, alienees or otherwise; the petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this territory, in which such testimony will, as he believes, be material; and, when the applicant expects to be the plaintiff, the obstacles preventing the immediate commencement of the action. [S. L. 1886, ch. 60, § 719. R. S. O., § 5874.]

Order for examination.

SEC. 3068. The court, or a judge thereof, may forthwith make an order allowing the examination of such witnesses; and the order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified. [S. L. 1886, ch. 60, § 720. R. S. O., § 5875.]

Cross interrogatories.

SEC. 3069. When it appears satisfactorily to the court or judge that the parties interested cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition, and prepare and file cross interrogatories to those contained therein; the witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories, where they are required to be prepared, and no other shall be propounded to them; nor shall any statement be received which is not responsive to some one of them; and the attorney who files the cross interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs. [S. L. 1886, ch. 60, § 721. R. S. O., § 5876.]

Taking and filing testimony.

SEC. 3070. Such depositions shall be taken before some officer authorized by law to take depositions, or before some person specially authorized by the court or judge, and shall be returned to the office of the clerk of the court in which the petition was filed. [S. L. 1886, ch. 60, § 722. R. S. O., § 5877.]

Approval of depositions—When competent evidence.

SEC. 3071. The court or judge, if satisfied that the depositions have been properly taken and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, the depositions or certified copies thereof may be given in evidence by either party, when the witnesses are dead or insane or when their attendance for oral examination cannot be required or obtained; but the depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action. [S. L. 1886, ch. 60, § 723. R. S. O., § 5878.]

Applicant to pay costs.

SEC. 3072. The applicant shall pay the costs of all proceedings under this chapter. [S. L. 1886, ch. 60, § 724. R. S. O., § 5879.]

CHAPTER 10.

MANDAMUS.

SECTION.
3073. Mandamus defined.
3074. By what courts issued.
3075. Application for writ.
3076. Must be no remedy at law.
3077. When writ to be peremptory, and when alternative.
3078. Journal entry of allowance of writ.
3079. Issuance and service of writ.
3080. Defendant may answer or demur.
3081. Reply and demurrer.
3082. Judgment on default.

SECTION.
3083. Effect and construction of pleadings.
3084. Issues of fact, how tried.
3085. Judgment for plaintiff—Damages.
3086. Recovery a bar to other actions.
3087. Costs against relator.
2088. Penalty for failure to comply with mandamus.
3089. When county treasurer to levy and assess tax.
3090. Duties and compensation of treasurer.
3091. Construction of last two sections.

Mandamus defined.

SEC. 3073. Mandamus is a writ issued in the name of the territory to an inferior tribunal, a corporation, board or person commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. [S. L. 1886, ch. 60, § 725. R. S. O., § 6741.]

By what courts issued.

SEC. 3074. The writ can only be issued by the supreme court or the district court; and although it may require an inferior tribunal to exercise its judgment, or to proceed to the discharge of any of its functions, it cannot control judicial discretion. [S. L. 1886, ch. 60, § 726. R. S. O., § 6742.]

Application for writ.

SEC. 3075. The application for the writ must be by petition, in the name of the territory, on the relation of the party applying, and verified by affidavit; and the court may require a notice of the application to be given to the defendant, or may grant an order to show cause why it should not be allowed, or may allow the writ without notice. [S. L. 1886, ch. 60, § 727. R. S. O., § 6743.]

Must be no remedy at law.

SEC. 3076. The writ must not be issued in a case where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested. [S. L. 1886, ch. 60, § 728. R. S. O., § 6744.]

When writ to be peremptory and when alternative.

SEC. 3077. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a court may, in the first instance, allow a peremptory mandamus; and in all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof. [S. L. 1886, ch. 60, § 729. R. S. O., § 6745.]

Journal entry of allowance of writ.

SEC. 3078. The allowance of the writ, and an order that the defendant, immediately upon service, do the act required to be performed, or when an alternative writ is allowed, that he do the act, or show cause before the court, at a specified time and place, why he does not do the act, shall be entered on the journal. [S. L. 1886, ch. 60, § 730. R. S. O., § 6746.]

Issuance and service of writ.

SEC. 3079. The writ shall be issued by the clerk of the court in which the application is made, and shall contain a copy of the petition, verification, and order of allowance, and shall be served upon the defendant personally, by copy, by the sheriff of the proper county, or by a person specially authorized by the court or judge; such officer or person shall report his proceedings therewith to the court; and if the service be made by a person not an officer, the return must be verified by his affidavit. [S. L. 1886, ch. 60, § 731. R. S. O., § 6747.]

Defendant may answer or demur.

SEC. 3080. On the return day of an alternative writ, or such further day as the court may allow, the defendant may answer as in a civil action; or, if the writ be allowed by a single judge, he may demur. [S. L. 1886, ch. 60, § 732. R. S. O., § 6748.]

Reply and demurrer.

SEC. 3081. The plaintiff may demur to the answer, or reply to any new matter therein, and the defendant may demur to the reply as in a civil action. [S. L. 1886, ch. 60, § 733. R. S. O., § 6749.]

Judgment on default.

SEC. 3082. If no answer be made, a peremptory mandamus must be allowed against the defendant. [S. L. 1886, ch. 60, § 734. R. S. O., § 6750.[

Effect and construction of pleadings.

SEC. 3083. The pleadings shall have the same effect, and must be construed and may be amended, as in civil actions. [S. L. 1886, ch. 60, § 735. R. S. O., § 6751.]

Issues of fact, how tried.

SEC. 3084. Issues of fact made by the pleadings must be tried, and the further proceedings thereon had, in the same manner as in civil actions. [S. L. 1886, ch. 60, § 736. R. S. O., § 6752.]

Judgment for plaintiff—Damages.

SEC. 3085. If judgment be given for the plaintiff, the relator may recover the damages which he has sustained, to be ascertained by the court, or a jury, or by a referee or master, as in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay. [S. L. 1886, ch. 60, § 737. R. S. O., § 6753.]

Recovery a bar to other actions.

SEC. 3086. Such recovery of damages against a defendant shall be a bar to any other action upon such cause of action. [S. L. 1886, ch. 60, § 738. R. S. O., § 6754.]

Costs against relator.

SEC. 3087. If judgment be given for the defendant, all costs shall be adjudged against the relator. [S. L. 1886, ch. 60, § 739. R. S. O., § 6755.]

Penalty for failure to comply with mandamus.

SEC. 3088. When a peremptory mandamus has been directed to a public officer, body or board, commanding the performance of a public duty specially enjoined by law, and the court find that such officer or any member of such body or board has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars upon such officer or member, and such fine, when collected, shall be paid into the treasury of the county wherein the duty ought to have been performed, and the payment thereof shall be a bar to an action for any penalty incurred by such officer or member by reason of such refusal or neglect. [S. L. 1886, ch. 60, § 740. R. S. O., § 6756.]

When county treasurer to levy and assess tax.

SEC. 3089. When a peremptory mandamus has been awarded against the commissioners of a county, or the trustees of a board of education, or the trustees of a municipal corporation, to levy and assess a tax to pay interest upon a debt or to create a sinking fund for the payment of a funded debt, and such officers have resigned, or refuse or neglect to levy and assess such tax, or their offices are vacant, the court, upon the motion of an interested person, and upon being satisfied of the fact of such resignation, vacancy, or refusal, or neglect to levy such tax, and of the right of such person to have the same levied and assessed may cause a special order to be issued to the county treasurer of the proper county, commanding him to levy and assess upon the taxable property of the county, town or municipal corporation, the taxes required by law, or the judgment or order of said court, to be levied and assessed for the purposes aforesaid, and to place the same upon the tax list for collection by the county treasurer. [S. L. 1886, ch. 60, § 741. R. S. O., § 6757.]

Duties and compensation of treasurer.

SEC. 3090. When such special order is issued to the county treasurer he shall be responsible for the execution thereof, in the same manner as if he were an officer of the court, and he shall receive such fees for his services in executing the order, if not otherwise fixed by the court, as is allowed by law for making tax duplicates, which fees and all other costs of the proceedings he shall add to the taxes levied in executing such order, and place the same upon the duplicate for collection with such taxes. [S. L. 1886, ch. 60, § 742. R. S. O., § 6758.]

Construction of last two sections.

SEC. 3091. The provisions of the last two sections shall not be construed to limit the power of the court to carry its order and judgment into execution, or to punish any officer named therein for contempt or disobedience of its orders or writs. [S. L. 1886, ch. 60, § 743. R. S. O., § 6759.]

CHAPTER 11.

QUO WARRANTO.

SECTION.
3092. Action against persons.
3093. Action against corporations.
3094. Commencement of action.
3095. Upon whose relation action brought.
3096. Action by person claiming public office.
3097. When an attorney may prosecute.
3098. Petition in action for usurpation of office—Judgment.
3099. All claimants may be made defendants.
3100. Place of bringing action.
3101. Application to file petition—Notice.
3102. Issuance and service of summons.
3103. Service by publication.
3104. Pleadings after petition.
3105. Extension of time for pleading.
3106. Judgment in case of usurpation.
3107. Judgment ousting trustee of corporation.
3108. Order for new election of trustee.
3109. Rights of person adjudged entitled to office.
3110. Action for damages against person ousted.
SECTION.
3111. Enforcement of judgment.
3112. Judgment against corporations.
3113. Appointment of trustees when corporation dissolved.
3114. Duties and powers of trustees.
3115. Enforcement of delivery to trustees.
3116. Judgment for costs.
3117. Order directing transfer of books, etc.—Enforcement.
3118. Injunction in aid of proceedings against banking association.
3119. When security required of bank directors.
3120. Directors may be enjoined from borrowing money.
3121. Limitation upon time of bringing action.
3122. Actions against officers of ousted corporations.
3123. Provisions of this chapter are cumulative.
3124. Disposition of fines.
3125. Precedence of actions under this chapter

Action against persons.

SEC. 3092. A civil action may be brought in the name of the territory:

First—Against a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise, within this territory, or an office in a corporation created by the authority of this territory;

Second—Against a public officer, civil or military, who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

Third—Against an association of persons who act as a corporation within this territory, without being legally incorporated, or who fail to comply with the corporation laws of the territory. [S. L. 1886, ch. 60, § 744. R. S. O., § 6760.]

Action against corporations.

SEC. 3093. A like action may be brought against a corporation:

First—When it has offended against a provision of an act for its creation, or renewal, or any act altering or amending such acts;

Second—When it has forfeited its privileges and franchises by non-user;

Third—When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges and franchises;

Fourth—When it has mis-used a franchise or privilege conferred upon it by law, or exercised a franchise or privilege not so conferred. [S. L. 1886, ch. 60, § 745. R. S. O., § 6761.]

Commencement of action.

SEC. 3094. The attorney general, or a prosecuting attorney, when directed by the governor, supreme court, or legislative assembly, shall commence any such action; and when, upon complaint or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof, he shall commence an action. [S. L. 1886, ch. 60, § 746. R. S. O., § 6762.]

Upon whose relation action brought.

SEC. 3095. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first sub-division of section three thousand and ninety-two, he may require security for costs, to be given as in other cases. [S. L. 1886, ch. 60, § 747. R. S. O., 6763.]

Action by person claiming public office.

SEC. 3096. A person claiming to be entitled to a public office unlawfully held and exercised by another, may, by himself or an attorney-at-law, upon giving security for costs, bring an action therefor. [S. L. 1886, ch. 60, § 748. R. S. O., § 6764.]

When an attorney may prosecute.

SEC. 3097. When the office of prosecuting attorney is vacant, or when the prosecuting attorney is absent, interested in the action or disabled from any cause, the court, or a judge thereof in vacation, may direct or permit any member of the bar to act in his place to bring and prosecute the action. [S. L. 1886, ch. 60, § 749. R. S. O., § 6765.]

Petition in action for usurpation of office—Judgment.

SEC. 3098. When the action is against a person for usurping an office, the petition shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto; and judgment may be rendered upon the right of the defendant, and also upon the right of the person so averred to be entitled, or only upon the right of the defendant, as justice requires. [S. L. 1886, ch. 60, § 750. R. S. O., § 6766.]

All claimants may be made defendants.

SEC. 3099. All persons who claim to be entitled to the same office or franchise, may be made defendants in the same action, to try their respective rights to such office or franchise. [S. L. 1886, ch. 60, § 751. R. S. O., § 6767.]

Place of bringing action.

SEC. 3100. An action under this chapter can be brought only in the supreme court, or in the district court of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situate, or has a place of business. [S. L. 1886, ch. 60, § 752. R. S. O., § 6768.]

Application to file petition—Notice.

SEC. 3101. Upon application for leave to file a petition, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the journal, or the fact shall be indorsed by the judge on the petition, which shall then be filed. [S. L. 1886, ch. 60, § 753. R. S. O., § 6769.]

Issuance and service of summons.

SEC. 3102. When the petition is filed without leave and notice, a summons shall issue, and be served as in other cases; and such summons may be sent to and returned by the sheriff of any county by mail, who shall be entitled to the same fees thereon as if it had been issued and returned in his own county. [S. L. 1886, ch. 60, § 754. R. S. O., § 6770.]

Service by publication.

SEC. 3103. When a summons is returned not served because the defendant, or its officers or office cannot be found within the county, the clerk shall publish for four consecutive weeks, in a newspaper published and of general circulation in the county, and if there is no such newspaper, then in a newspaper printed in this territory, and of general circulation in such county, a notice setting forth the filing and substance of the petition, and, upon proof of such publication, the default of the defendant may be entered and judgment rendered thereon, as if the defendant had been served with summons. [S. L. 1886, ch. 60, § 755. R. S. O., § 6771.]

Pleadings after petition.

SEC. 3104. The defendant may demur, or file an answer, which may contain as many several defenses as he has, within thirty days after the filing of the petition, if it was filed on leave and notice, or after the return day of the summons; and the plaintiff may file a demurrer or a reply to such answer within thirty days thereafter. [S. L. 1886, ch. 60, § 756. R. S. O., § 6772.]

Extension of time for pleading.

SEC. 3105. An order may be made by the court, or a judge thereof, extending the time within which any pleading may be filed; but such order shall not work a continuance of the case. [S. L. 1886, ch. 60, § 757. R. S. O., § 6773.]

Judgment in case of usurpation.

SEC. 3106. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs. [S. L. 1886, ch. 60, § 758. R. S. O., § 6774.]

Judgment ousting trustee of corporation.

SEC. 3107. When the action is against a trustee or director of a corporation, and the court finds that, at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected at such election. [S. L. 1886, ch. 60, § 759. R. S. O., § 6775.]

Order for new election of trustee.

SEC. 3108. In a case named in the last section, the court may order a new election to be held, at a time and place and by judges appointed by the court, notice of which election, and naming the judges, shall be given for the time and in the manner provided by law for notice of elections of directors or trustees of such corporation; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally, or left at its principal office; and the court may enforce its order by attachment, or in any other manner it deems necessary. [S. L. 1886, ch. 60, § 760. R. S. O., § 6776.]

Rights of persons adjudged entitled to office.

SEC. 3109. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office and executing any official bond required by law, take upon him the execution of the office; and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power, appertaining to the office from which he has been ousted. [S. L. 1886, ch. 60, § 761. R. S. O., § 6777.]

Action for damages against person ousted.

Sec. 3110. Such person may, at any time within one year after the date of such judgment, bring an action against the party ousted and recover the damages he sustained by reason of such usurpation. [S. L. 1886, ch. 60, § 762. R. S. O., § 6778.]

Enforcement of judgment.

Sec. 3111. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court and shall be fined in any sum not exceeding ten thousand dollars, and imprisoned in the jail of the county until he complies with the order of the court or is otherwise discharged by due course of law. [S. L. 1886, ch. 60, § 763. R. S. O., § 6779.]

Judgment against corporations.

Sec. 3112. When in any such action it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges and franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense or the exercise of such power. [S. L. 1886, ch. 60 § 764. R. S. O., § 6780.]

Appointment of trustees when corporation dissolved.

Sec. 3113. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking payable to the Territory of Wyoming, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses. [S. L. 1886, ch. 60, § 765. R. S. O., § 6781.]

Duties and powers of trustees.

Sec. 3114. The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations and papers of every description within the custody, power or control of the officers of the corporation, or either of them, belonging to the corporation, or in any wise necessary for the settlement of its affairs, or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders, to the extent of its property and effects which come into their hands. [S. L. 1886, ch 60, § 766. R. S. O., § 6782.]

Enforcement of delivery to trustees.

Sec. 3115. An officer of such corporation who refuses or neglects to deliver over any such money, or other things, pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal. [S. L. 1886, ch. 60, § 767. R. S. O., § 6783.]

Judgment for costs.

SEC. 3116. If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors, trustees or other officers of the corporation, or against the person claiming to be a corporation. [S. L. 1886, ch. 60, § 768. R. S. O., § 6784.]

Order directing transfer of books, etc.—Enforcement.

SEC. 3117. In all sections under this chapter, when the judgment is against the defendant, the court may make an order directing the defendant forthwith to deliver over the books, papers, property, money, deeds, notes, bills, and obligations to the persons entitled thereto, or the trustees so appointed to receive the same, and may send a transcript of the proceedings, including a copy of such order, to the district court of the proper county, with a special mandate directing such court to carry the same into effect; and upon complaint being made, upon affidavit, to such district court, or a neglect or refusal to comply with such order, that court shall direct an attachment, returnable forthwith, to issue for the defendant, who may be required to answer under oath touching the premises; and if it appear that the defendant so neglects or refuses, such court shall render judgment of fine or imprisonment, or both, as the court making the order might have rendered. [S. L. 1886, ch. 60, § 769. R. S. O., § 6785.]

Injunction in aid of proceedings against banking association.

SEC. 3118. Any stockholder or stockholders, owning not less than one-fourth of the capital stock of any banking association, actually paid in, or entitled to the beneficial interest therein, may have, pending proceedings in *quo warranto* against such corporation, an injunction restraining the directors or trustees thereof from making any disposition of the assets of such corporation prejudicial to the interests of such stockholder or stockholders, or inconsistent with their duties as directors or trustees. [S. L. 1886, ch. 60, § 770. R. S. O., § 6786.]

When security required of bank directors.

SEC 3119. The court, or a judge thereof in vacation, may, upon satisfactory proof that the directors or trustees of such corporation have violated, or are about to violate, any of the franchises thereof, require them to give security to the stockholders thereof, to the satisfaction of the court or judge, for the proper discharge of their duties, and for the proper management and security of the assets, and such court or judge may enjoin such directors or trustees from paying out or issuing the notes of circulation of such bank, and from incurring any additional liabilities, except for the payment of the necessary services of the officers and employes of such banking association, the amount of which, while such proceedings are pending, shall be under the control of the court. [S. L. 1886, ch. 60, § 771. R. S. O., § 6787.]

Directors may be enjoined from borrowing money.

SEC. 3120. Such court or judge may, on petition, enjoin such directors or trustees from borrowing or issuing, either directly or indirectly, any of the money or assets of such bank, for their individual benefit while such proceedings are pending. [S. L. 1886, ch. 60, § 772. R. S. O., § 6788.]

Limitation upon time of bringing action.

SEC. 3121. Nothing in this chapter contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against a corporation for the exercise of a power or franchise under its charter which it has used and exercised for a term of twenty years; nor shall an action be brought against an officer to oust him from his office, unless within three years after the cause of such ouster, or the right to hold the office arose. [S. L. 1886, ch. 60, § 773. R. S. O., § 6789.]

Actions against officers of ousted corporations.

SEC. 3122. When judgment of forfeiture and ouster is rendered against a corporation because of any misconduct of the officers, trustees or directors thereof, a person injured thereby may, at any time within one year thereafter, in an action against such officers or directors, recover the damages he has sustained by reason of such misconduct. [S. L 1886, ch. 60, § 774. R. S. O., § 6790.]

Provisions of this chapter are cumulative.

SEC. 3123. Nothing in this chapter contained is intended to restrain any court from enforcing the performance of trusts for charitable purposes, at the relation of the prosecuting attorney of the proper county or from enforcing trusts, or restraining abuses, in other corporations, at the suit of a person injured. [S. L. 1886, ch. 60, § 775. R. S. O., § 6791.]

Disposition of fines.

SEC. 3124. All fines collected under the provisions of this chapter shall be paid into the treasury of the proper county, for the use of the common schools within the county. [S. L. 1886, ch. 60, § 776. R. S. O., § 6792.]

Precedence of actions under this chapter.

SEC. 3125. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern, shall, on the motion of the attorney general or prosecuting attorney, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties. [S. L. 1886, ch. 60, § 777. R. S. O., § 6793.]

CHAPTER 12.

JURISDICTION AND PROCEDURE IN ERROR.

SECTION.
3126. Final order defined.
3127. Jurisdiction of district court.
3128. Jurisdiction of supreme court.
3129. Printing of record in supreme court
3130. When supreme court to assess penalties.
3131. Petition in error—Summons.
3132. Issuance and service of summons.
3133. When summons to issue after waiver of error.
3134. Transcript to be filed with petition.
3135. Transcript to be furnished on payment of fees.
3136. Stay of execution of judgment.
3137. Undertaking to be approved.
3138. Substitute for undertaking.
3139. Executors, etc., not to give undertaking.
SECTION.
3140. If restitution undertaking given, execution may issue.
3141. Limitation on time for proceeding in error.
3142. Stay of execution on judgment of justice.
3143. Stay of execution in other cases.
3144. Proceedings after reversal.
3145. Costs on error.
3146. Misprison of clerk, when ground of error.
3147. Rendering judgment prematurely is clerical error.
3148. Penalty on affirmance in district court.
3149. Writs of error and *certiorari* abolished.
3150. Proceedings when judgment of justice is affirmed.
3151. Proceedings when judgment of justice is reversed.

Final order defined.

SEC. 3126. An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding, or upon a summary application in an action, after judgment, is a final order which may be vacated, modified or reversed, as provided in this chapter. [S. L. 1886, ch. 60, § 778. R. S. O., § 6707.]

Jurisdiction of district court.

SEC. 3127. A judgment rendered or final order made by a probate court, justice of the peace, or any other tribunal, board or officer, exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court. [S. L. 1886, ch. 60, § 779. R. S. O., § 6708.]

Jurisdiction of supreme court.

SEC. 3128. A judgment rendered or final order made by the district court, may be reversed, vacated or modified by the supreme court, for errors appearing on the record. [S. L. 1886, ch. 60, § 780. R. S. O., § 6709.]

Printing of record in supreme court.

SEC. 3129. When a petition in error is filed in the supreme court, so much of the record to be reviewed as will show the error complained of, shall be printed, and ten of the printed copies thereof filed with the papers; the plaintiff may have the printing done, or deposit with the clerk money sufficient therefor; and if he fail, for sixty days after filing the petition, to file such printed copies, or make such deposit, the petition shall be dismissed, unless the court, on good cause shown, extend the time, or dispense with such printing; and the expense of printing shall be taxed as part of the costs; *Provided*, That in all cases where the amount involved does not exceed five hundred dollars, printing of the record, or any part thereof, shall not be required. [S. L. 1886, ch. 60, § 781. R. S. O., § 6711.]

When supreme court to assess penalties.

SEC. 3130. When, in any such case, the judgment or final order of the district court is affirmed, there shall be taxed as part of the costs in the case, a reasonable fee, to be fixed by the court, not less than twenty-five nor more than three hundred dollars, to the counsel of the defendant in error; and the court shall adjudge to the defendant in error damages in such sum as may be reasonable, not exceeding five hundred dollars, unless the judgment or final order of the district court directs the payment of the money, and execution thereof was stayed in such proceeding in error in the supreme court, when in lieu of such penalty, it shall bear additional interest at a rate not exceeding five per centum per annum, for the time for which it was stayed, to be ascertained and awarded by the court; but if the supreme court certify in its judgment that there was reasonable cause for the proceeding in error, neither such fee, nor additional interest, nor penalty, shall be taxed, adjudged or awarded. [S. L. 1886, ch. 60, § 782. R. S. O., § 6712.]

Petition in error—Summons.

SEC. 3131. The proceedings to obtain such reversal, vacation, or modification, shall be by petition in error, filed in a court having power to make the reversal, vacation or modification, and setting forth the errors complained of; thereupon a summons shall issue and be served, or publication made, as in the commencement of an action, and a service on the attorney of record in the original case shall be sufficient, the summons shall contain a statement that a petition in error has been filed in the case; and if issued in vacation, it shall be returnable on or before the first day of the term of the court, and if issued in term time, it shall be returnable on a day therein named; and if the last publication, or service of the summons, be made ten days before the end of the term, the case shall stand for hearing at that term. [S. L. 1886, ch. 60, § 783. R. S. O., § 6713.]

Issuance and service of summons.

SEC. 3132. The summons mentioned in the last section shall, upon the written precipe of the plaintiff in error, or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error, or his attorney of record is found; when the writ is issued to a foreign county, the sheriff thereof may return it by mail to the clerk, and shall be entitled to the same fees as if it had been returnable to the district court of the county in which such officer resides; and the defendant in error, or his attorney, may waive, in writing, the issue or service of the summons. [S. L. 1886, ch. 60, § 784. R. S. O., § 6714.]

When summons to issue after waiver of error.

SEC. 3133. A summons in error shall not be issued in a case in which there is, upon the minutes of the court, or among the files of the cause, a waiver of error by the party endeavoring to commence such proceedings, or his attorney, unless the court in which the petition is to be filed, or a judge thereof, indorse on the same permission to issue the summons. [S. L. 1886, ch. 60, § 785. R. S. O., § 6715.]

Transcript to be filed with petition.

SEC. 3134. The plaintiff in error shall file with his petition, either a transcript of the final record or a transcript of the docket or journal entries, with such original papers or transcripts thereof as are necessary to exhibit the error complained of; and, if original papers and pleadings are filed, and the final record has not been made, the reviewing court may permit the temporary withdrawal of the originals for a reasonable time, to allow the recording thereof, or direct copies thereof to be made and filed, and the originals to be returned to the inferior tribunal. [S. L. 1886, ch. 60, § 786. R. S. O., § 6716.]

Transcript to be furnished on payment of fees.

SEC. 3135. Probate judges, justices of the peace and other judicial tribunals, having no clerk, and the clerks of every court of record, shall, upon request, and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order in said courts, to either of the parties to the same, or to any person interested in procuring such transcript. [S. L. 1886, ch. 60, § 787. R. S. O., § 6717.]

Stay of execution of judgment.

SEC. 3136. No proceeding to reverse, vacate or modify a judgment or final order rendered in the probate court, or district court, except as provided in the fourth sub-division of this section, and in sections thirty-one hundred and thirty-eight and thirty-one hundred and thirty-nine, shall operate to stay execution, unless the clerk of the court in which the record of such judgment or final order is made, take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with sufficient surety, as follows:

First—When the judgment or final order sought to be reversed directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation money and costs, if the judgment or final order be affirmed, in whole or in part:

Second—When it directs the execution of a conveyance or other instrument, the undertaking shall be in such sum as may be prescribed by a court of record or a judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same be affirmed, and pay the costs;

Third—When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by a court of record, or a judge thereof, to the effect that, during the possession of such property by the plaintiff in error, he will not commit nor suffer to be committed any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs; and when the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising from the sale, the undertaking must also provide for the payment of such deficiency;

Fourth—When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the reviewing court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment, and pay costs, if the judgment be affirmed. [S. L. 1886, ch. 60, § 788. R. S. O., § 6718.]

Undertaking to be approved.

SEC. 3137. Before the written undertaking mentioned in the last preceding section shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall indorse such approval, signed by himself, upon the undertaking and file the same in his office for the defendant in error. [S. L. 1886, ch. 60, § 789. R. S. O., § 6719.]

Substitute for undertaking.

SEC. 3138. Instead of the undertaking prescribed in the second subdivision of section thirty-one hundred and thirty-six, the conveyance or other instrument may be executed and deposited with the clerk of the court in which the judgment was rendered, or order made, to abide the judgment of the reviewing court. [S. L. 1886, ch. 60, § 790. R. S. O., 6720.]

Executors, etc., not to give undertaking.

SEC. 3139. Executors, administrators and guardians who have given bond in this territory, with surety according to law, shall not be required to give the undertaking mentioned in section thirty-one hundred and thirty-six. [S. L. 1886, ch. 60, § 791. R. S. O., § 6721.]

If restitution undertaking given, execution may issue.

SEC. 3140. In an action on a contract for the payment of money only, or in an action for injuries to the person, if the defendant in error give adequate security to make restitution in case the judgment be reversed or modified, he may, on leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment, notwithstanding the execution of the undertaking to stay proceedings; such security must be an undertaking executed to the plaintiff in error, by at least two sufficient sureties, to the effect that if the judgment be reversed or modified he will make full restitution to the plaintiff in error of the money by him received under the judgment; but the provisions of this section shall not apply to judgments recovered in actions for libel, slander, malicious prosecution, false imprisonment or assault and battery. [S. L. 1886, ch. 60, § 792. R. S. O., § 6722.]

Limitation on time for proceeding in error.

SEC. 3141. No proceeding to reverse, vacate or modify a judgment or final order shall be commenced unless within two years after the rendition of the judgment, or the making of the final order complained of; or, in case the person entitled to such proceeding is an infant, a married woman, a person of unsound mind, or in prison, within two years, as aforesaid, exclusive of the time of such disability. [S. L. 1886, ch. 60, § 793. R. S. O., § 6723.

Stay of execution on judgment of justice.

SEC. 3142. No proceeding to reverse, vacate or modify a judgment rendered, or final order made, by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court take a written undertaking to the defendant, executed on the part of the plaintiff in error, by sufficient surety, to the effect that the plaintiff will pay all the costs that have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the cause, after the judgment of the court below is set aside or reversed, or upon and after the affirmance thereof in the district court; when the judgment or final order of a justice, sought to be reversed, directs the delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by the district court, or a judge thereof, or in the absence of such judge, by the probate judge of the county, to the effect that, during the possession of such property by the plaintiff in error, he will not commit, nor suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the property, pursuant to the judgment and costs; and the person entitled to such proceedings shall have the same time for prosecuting the same before he is barred, as is provided in the last section, unless the judgment be paid off or satisfied prior to the commencement of such proceedings. And except to stay execution a bond or undertaking shall not be required in cases taken by any method from a justice's court to a district court, and bonds to stay execution shall be given only as provided in this section. [S. L. 1886, ch. 60, § 794. R. S. O., § 6724.]

Stay of execution in other cases.

SEC. 3143. Execution of a judgment or final order, other than those enumerated in this chapter, of any judicial tribunal, or the levy or collection of any tax or assessment therein litigated, may be stayed, on such terms as may be prescribed by the court in which the petition in error is filed, or by a judge thereof. [S. L. 1886, ch. 60, § 795. R. S. O., § 6725.]

Proceedings after reversal.

SEC. 3144. When a judgment or final order is reversed, either in whole or in part, in the district court, or the supreme court, the court reversing the same, shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; the district court so reversing a judgment shall, upon the request of either party, specify in writing the ground or grounds of such reversal, which shall be filed and kept with the papers in the case; the court reversing or affirming such judgment or final order shall not issue execution in causes that are so brought before it on error, on which it pronounces judgment as aforesaid, but shall send a special mandate to the court below, as the case may require, for execution thereon, and the court to which such special mandate is sent, shall proceed in the same manner as if such judgment or final order had been rendered therein; and on motion and good cause shown, it may suspend any execution made returnable before it by order of the district court, or supreme court, in the same manner as if the execution had been issued from its own court; but such suspension shall not extend further than to stay proceedings until the matter can be further heard by the district court, or the supreme court, as the case may be; but this section shall not apply to judgments of justices of the peace. [S. L. 1886, ch. 60, § 796. R. S. O., § 6726.]

Costs on error.

SEC. 3145. When a judgment or final order is reversed the plaintiff in error shall recover his costs, and when reversed in part and affirmed in part, the court may apportion the costs between the parties in such manner as it deems equitable. [S. L. 1886, ch. 60, § 797. R. S. O., § 6727.]

Misprison of clerk, when ground of error.

SEC. 3146. A mistake, neglect or omission of the clerk shall not be a ground of error until the same has been presented and acted upon in the court in which the mistake, neglect or omission occurred. [S. L. 1886, ch. 60, § 798. R. S. O., § 6728.]

Rendering judgment prematurely is clerical error.

SEC. 3147. The rendering of judgment before the action stood for trial according to the provisions of law and the rules of court shall be deemed a clerical error. [S. L. 1886, ch. 60, § 799. R. S. O., § 6729.]

Penalty on affirmance in district court.

SEC. 3148. If the district court affirm a judgment on petition in error, it shall also render judgment against the plaintiff in error for five per centum upon the amount due from him to the defendant in error, unless the court enter upon its minutes that there was reasonable ground for the proceeding in error. [S. L. 1886, ch. 60, § 800. R. S. O., § 6730.]

Writs of error and certiorari abolished.

SEC. 3149. Writs of error and *certiorari* to reverse, vacate or modify judgments or final orders in civil cases are abolished; but courts shall have the same power to compel transcripts of the proceedings, containing the judgment or final order sought to be reversed, to be furnished, completed or perfected as they heretofore had under writs of error and *certiorari*. [S. L. 1886, ch. 60, § 801. R. S. O., § 6731.]

Proceedings when judgment of justice is affirmed.

SEC. 3150. If the judgment of a justice of the peace, taken on error, as herein provided, to the district court, be affirmed, such court shall render judgment against the plaintiff in error for the costs of suit, and award execution therefor; and the court shall thereupon order its clerk to certify its decision to the justice, so that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of the justice, in the same manner as if the judgment had been rendered in the district court. [S. L. 1886, ch. 60, § 802. R. S. O., § 6732.]

Proceedings when judgment of justice is reversed.

SEC. 3151. When the proceedings of a justice of the peace are taken on error to the district court, in manner aforesaid, and the judgment of such justice is reversed or set aside, the court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause, except when the reversal is because the justice had no jurisdiction of the plaintiff in error, or the subject of the action, shall be retained by the court for trial and final judgment, as in cases of appeal. [S. L. 1886, ch. 60, § 803. R. S. O., § 6733.]

DIVISION 8. PROVISIONS AS TO THE OPERATION OF THIS TITLE.

CHAPTER 1.

GENERAL PROVISIONS.

SECTION.
3152. Appeal of pending proceedings in chancery not affected.
3153. Pending actions — Existing and future causes of action.

SECTION.
3154. Application to certain special proceedings.
3155. Application to special statutory actions.

Appeal of pending proceedings in chancery not affected.

SEC. 3152. The final orders or decrees heretofore rendered in chancery cases, or which may be hereafter rendered in any chancery proceeding pending at the time this title takes effect, may be appealed and reviewed in the same manner and under the same restrictions as if this title had not been passed. [S. L. 1886, ch. 60, § 804.]

Pending actions—Existing and future causes of action.

SEC. 3153. The provisions of this title do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment or decree, in all respects, as if it had not been adopted; but the provisions of this title shall apply after a judgment, order or decree heretofore or hereafter rendered, to the proceedings to enforce, vacate, modify or reverse it, except in such chancery cases as are provided for in the last preceding section. Rights of civil action given or secured by existing laws shall be prosecuted in the manner provided for in and by this title, except as provided in the next section. If a case ever arise in which an action or proceeding for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this title, the practice of the common law may be adopted, so far as it may be necessary to prevent a failure of justice. [S. L. 1886, ch. 60, § 805.]

Application to certain special proceedings.

SEC. 3154. Until the legislature shall otherwise provide, this title shall not affect proceedings to assess damages for private property taken for public uses, nor proceedings under the statutes for the settlement of estates of deceased persons, nor proceedings under statutes relating to apprentices, bastardy, insolvent debtors, or any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under this title whenever it is applicable. [S. L. 1886, ch. 60, § 806.]

Application to special statutory actions.

SEC. 3155. Where, by general or special statute, a civil action is given, and the mode of proceeding therein is prescribed, this title shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this title, the proceedings shall be conducted in conformity thereto. Where the statute designates, by name or otherwise, the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this title; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this title, and proceeded in accordingly. [S. L. 1886, ch. 60, § 807.]

TITLE 39. PROCEDURE-CRIMINAL.

CHAPTER 1. PROCEEDINGS TO PREVENT CRIME.
CHAPTER 2. SEARCH WARRANTS.
CHAPTER 3. ARREST.
CHAPTER 4. EXAMINATIONS.
CHAPTER 5. BAIL.
CHAPTER 6. GRAND JURY PROCEEDINGS.
CHAPTER 7. INDICTMENTS AND PROCESS THEREON.
CHAPTER 8. PLEAS TO INDICTMENT—ARRAIGNMENT—CHANGE OF VENUE.
CHAPTER 9. JURIES AND CHALLENGES.
CHAPTER 10. EVIDENCE.
CHAPTER 11. TRIAL AND EXCEPTIONS.
CHAPTER 12. VERDICT, JUDGMENT AND PROCEEDINGS THEREON.
CHAPTER 13. NEW TRIALS.
CHAPTER 14. MOTIONS IN ARREST.
CHAPTER 15. PROCEEDINGS IN ERROR.
CHAPTER 16. FUGITIVES FROM JUSTICE.
CHAPTER 17. REPRIEVES AND PARDONS.
CHAPTER 18. PROVISIONS RELATING TO CONVICT LABOR.

CHAPTER 1.

PROCEEDINGS TO PREVENT CRIME.

SECTION.
3156. Complaint and warrant.
3157. Examination before justice—Recognizance.
3158. Accused committed in default of recognizance.
3159. Discharge of accused—Costs.
3160. Condition of recognizance taken in term time.
3161. Recognizance to be returned to clerk of court.

SECTION.
3162. Proceedings in district court.
3163. Accused committed in default of surety.
3164. Costs on finding against accused.
3165. Accused discharged if complainant fails to appear.
3166. Complainant to pay costs when accused discharged.
3137. Authority of justice when offense committed in his presence.

Complaint and warrant.

SEC. 3156. Whenever any person shall make complaint in writing upon oath before any justice of the peace or police justice or other officer authorized by law to examine into charges in relation to the commission of crime, that he has just cause to fear, and does fear, that another will commit any offense against the person or property of himself, his ward, or child, it shall be the duty of the justice before whom such complaint is made to issue a warrant in the name of the territory to any constable of the county, commanding him forthwith to arrest the person complained of and him to take before such justice or any other justice named, in the same county, to answer such complaint. [C. L. 1876, ch. 14, § 1.]

Examination before justice—Recognizance.

SEC. 3157. When the party complained of shall be brought before the justice he shall be heard in his defense and all witnesses produced shall be examined upon oath, and if, upon such examination, the justice shall be of opinion there is just cause for the complaint he shall order the person complained of to enter into recognizance, with good and sufficient surety, in any sum not less than fifty dollars nor more than five hundred dollars for his appearance before the district court on the first day of the next term thereof, and in the meantime that he shall keep the peace and be of good behavior generally, and especially toward the person complaining. [C. L. 1876, ch. 14, § 2.]

Accused committed in default of recognizance.

Sec. 3158. In default of such recognizance and surety as provided in the preceding section, the justice shall commit the person complained of to the jail of the county, there to remain until discharged by due course of law. [C. L. 1876, ch. 14, § 3.]

Discharge of accused—Costs.

Sec. 3159. But if the justice on the examination shall be satisfied that there is no just cause for the complaint, it shall be his duty to discharge the accused and render judgment in the name of the territory against the party complaining, for the costs of the prosecution, and the same shall be collected by execution as in civil cases. [C. L. 1876, ch. 14, § 4.]

Condition of recognizance taken in term time.

Sec. 3160. If any recognizance be taken under the provisions of this chapter in term time of that court to which the same may be returnable, every such recognizance shall require the person bound thereby to appear forthwith before such court. [C. L. 1876, ch. 14, § 5.]

Recognizances to be returned to clerk of court.

Sec. 3161. All recognizances authorized to be taken as aforesaid, either in term time or vacation of that court to which the same may be returnable, shall be delivered or transmitted by the justice taking the same, to the clerk of such court without unnecessary delay, and before the commencement of the term of the court next thereafter to be holden, if such recognizance be taken in vacation; but if the same be taken in term time, then it shall be returned forthwith. [C. L. 1876, ch. 14, § 6.]

Proceedings in district court.

Sec. 3162. The district court to which any recognizance to keep the peace, as aforesaid, shall be returned, shall, upon the appearance of the parties complaining and complained of, examine the witnesses produced upon oath, and may either discharge the accused from his recognizance or may order him to enter into such other and further surety as may be just, thereafter to keep the peace and be of good behavior for such term of time as the court may order. [C. L. 1876, ch. 14, § 7.]

Accused committed in default of surety.

Sec. 3163. For want of such surety, the court shall commit the person accused to the jail of said county, there to remain until such order be complied with or he be otherwise discharged by due course of law; but in no case shall a person so failing to give surety be confined for a period of time exceeding three months. [C. L. 1876, ch. 14, § 8.]

Costs on finding against accused.

Sec. 3164. Whether such person be held to bail or be committed for want thereof, the court shall, in either case, render judgment against him for the costs of the prosecution and award execution therefor. [C. L. 1876, ch. 14, § 9.]

Accused discharged if complainant fails to appear.

Sec. 3165. When any person shall have been recognized to the district court, to keep the peace as aforesaid, and the complainant shall fail to prosecute his complaint, the party recognized shall be discharged unless good cause to the contrary be shown. [C. L. 1876, ch. 14, § 10.]

Complainant to pay costs when accused discharged.

Sec. 3166. If the district court shall discharge the person accused on examination of the complaint, or because the complainant has failed to appear, said court shall render judgment against the person complaining, for the costs of prosecution, and award execution therefor. [C. L. 1876, ch. 14, § 11.]

Authority of justice when offense committed in his presence.

Sec. 3167. Every person who, in the presence of any justice specified in the first section, shall make an affray or threaten to kill or beat another, or to commit any offense against the person or property of another, and every person who, in the presence of such officer, shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to give such surety as above specified, and in case of failure or refusal, he may be committed in like manner as above specified. [C. L. 1876, ch. 14, § 12.]

CHAPTER 2.

SEARCH WARRANTS.

SECTION.
3168. For what purposes issued.
3169. Requisites of complaint.
3170. Requisites of warrant.
3171. When search may be made at night.
3172. Property to be preserved as evidence.

SECTION.
3173. Justice to control property.
3174. Disposition of property.
3175. Disposition of counterfeit coin, etc.
3176. Sale of unclaimed stolen property, etc.
3177. Sale of property, when thief not taken.

For what purposes issued.

Sec 3168. It shall be lawful for any justice or other person named in section thirty-one hundred and fifty-six, to issue warrants to search any house or place:

First—For property stolen, embezzled, or obtained under false pretenses or tokens;

Second—For forged or counterfeit coins, stamps, labels, trade marks, bank bills, or other instruments of writing;

Third—For books, pamphlets, ballads or printed papers containing obscene language, prints, pictures or descriptions manifestly tending to corrupt the morals of youths, and intended to be sold or circulated;

Fourth—For any gaming table, establishment, device or apparatus, kept or exhibited for the purpose of unlawful gaming, and for any money or personal property won by unlawful gaming. [C. L. 1876, ch. 14, § 13.]

Requisites of complaint.

Sec. 3169. No warrant for search, as described in the preceding section, shall be issued until a complaint in writing, upon oath, has been filed with the justice; such complaint shall be signed by the complainant, and particularly describe the house or place to be searched, the person to be seized, and the things to be searched for, and allege substantially the offense in relation thereto, and that the complainant verily believes that such things are there concealed. [C. L. 1876, ch. 14, § 14.]

Requisites of warrant.

Sec. 3170. The warrant for search shall be directed to the proper officer, and shall recite, by reference to the complaint, annexed or otherwise, all the material facts alleged in the complaint, and particularly describe the things for which the search is to be made, the house or place to be searched, and the person to be apprehended. It shall command the officer to search such house or place in the day time, for the property or other things; and, if found, to seize and bring the same, together with the person to be apprehended, before the justice, or some other justice of the county, having cognizance of the same. [C. L. 1876, ch. 14, § 15.]

When search may be made at night.

Sec. 3171. If the justice iss atisfied that there is urgent necessity therefor, the warrant may order the searching of such house or place in the night time. [C. L. 1876, ch. 14 § 16.]

Property to be preserved as evidence.

SEC. 3172. When the warrant is executed by the seizure of the property, or things described therein, the same shall be safely kept by the justice to be used as evidence. [C. L. 1876, ch. 14 § 17.]

Justice to control property.

SEC. 3173. If, upon the examination, the justice shall be satisfied that the offense set forth in the complaint in reference to the property or other things seized by the officer, has been committed, it shall be his duty either to keep possession of such property or other things, or deliver them to the sheriff of the proper county, there to remain until the case against the offender has been disposed of or the claimant's right has been otherwise ascertained. [C. L. 1876, ch. 14, § 18.]

Disposition of property.

SEC. 3174. Upon the conviction of the offender, the property stolen, embezzled or obtained under false pretenses, shall be returned to its owner, and the other things specified shall be burnt or otherwise destroyed, under the direction of the court; but if the alleged offender shall be discharged, either before the magisrate or the court before which he is recognized to appear, the property or other things shall be returned to the person in whose possession they were found. [C. L. 1876, ch. 14 § 19.]

Disposition of counterfeit coin, etc.

SEC. 3175. Whenever a counterfeit coin or instrument for the purpose of making or gilding counterfeit coin, shall be taken from the convicts or persons indicted for counterfeiting or having the same in possession with criminal intent, and shall remain in the keeping of any county officers, it shall be lawful for the commissioners of the proper county to melt the said counterfeit coin into a mass, or cast the same into other form than that of coin, and sell the same, together with the instruments aforesaid, and pay the avails into the treasury of such county for the benefit of the common schools therein; *Provided*, The said instruments be so mutilated and broken as to prevent their being applied to the purpose of counterfeiting. [C. L. 1876, ch. 14, § 196.]

Sale of unclaimed stolen property, etc.

SEC. 3176. Whenever any property stolen, embezzled, or obtained under false pretenses, shall, after the trial of the person charged with the larceny, embezzlement or false obtaining thereof, remain in the possession of any officer, unclaimed by the owner, for the space of three months, the same shall, after public notice in a newspaper printed in the county, or by posting notices, under an order of the court or judge thereof, in case there shall be no paper published in said county, be sold at auction to the highest bidder, under the direction of the prosecuting attorney, and the avails thereof paid over to the treasurer of the county for the use of the common schools therein. [C. L. 1876, ch. 14, § 197.]

Sale of property when thief not taken.

SEC. 3177. In case any property stolen, embezzled or obtained under false pretenses, shall remain in the custody of any officer for one year unclaimed, as aforesaid, and the thief shall not within that time be taken, or if taken, shall escape, it shall be disposed of in like manner and for like purposes as indicated in the preceding section. [C. L. 1876, ch. 14, § 198.]

CHAPTER 3.

ARREST.

SECTION.
3178. Who may make arrest.
3179. When citizen may make arrest.
3180. Who may issue process.
3181. Warrant to be issued on complaint.
3182. Security for costs may be required.
SECTION.
3183. Requisites of warrant.
3184. Accused may be arrested in any county.
3185. When justice of other county may issue warrant.
3186. Authority of officer in executing warrant.

Who may make arrests.

SEC. 3178. Every sheriff, deputy sheriff, constable, marshal or deputy marshal, watchman or police officer shall arrest and detain any person found violating any law of this territory, or any legal ordinance of any city, or incorporated village, until a legal warrant can be obtained. [C. L. 1876, ch. 14, § 20].

When citizen may make arrest.

SEC. 3179. Any person not an officer, may, without warrant, arrest any person if a petit larceny or felony has been committed, and there is reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained. [C. L. 1876 ch. 14, § 21.]

Who may issue process.

SEC. 3180. The justice and other officers enumerated in the first section of this title, shall have the power to issue process for the apprehension of any person charged with a criminal offense, and to execute the powers and duties conferred in this chapter. [C. L. 1876, ch. 14, § 22.]

Warrant to be issued on complaint.

SEC. 3181. Whenever a complaint in writing and upon oath, signed by the complainant, shall be filed with the justice, charging any person with the commission of any offense, it shall be the duty of such justice to issue a warrant for the arrest of the person accused, if he shall have reasonable grounds to believe that the offense charged has been committed. [C. L. 1876, ch. 14, § 23.]

Security for costs may be required.

SEC. 3182. When the offense charged is a misdemeanor, the justice, before issuing the warrant, may, at his discretion, require the complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment of security for costs shall be entered on the docket, and the justice, on dismissal may, if in his opinion the complaint was without probable cause, enter a judgment against such complainant for the costs made thereon, and in case said justice shall consider such complainant wholly irresponsible, such justice may, in his discretion, refuse to issue any warrant unless the complainant procure some responsible security, to the satisfaction of such justice, for said costs in case of such dismissal, and said security shall acknowledge himself so bound, and the justice shall enter it on his docket. [C. L. 1876, ch. 14, § 24.]

Requisites of warrant.

SEC. 3183. The warrant shall be directed to any constable of the county and, reciting the accusation shall command the officer to forthwith take the accused and bring him before the justice issuing the warrant or some other justice having cognizance of the case, to be dealt with according to law. [C. L. 1876, ch. 14, § 25.]

Accused may be arrested in any county.

SEC. 3184. If any person charged as aforesaid with the commission of an offense, shall flee from justice, it shall be lawful for the officer in whose hands the warrant for such person has been placed, to pursue and arrest such person in any other county of this territory and him to convey before the justice issuing the warrant, or any other justice having cognizance of the case, of the county where such offense was committed. [C. L. 1876, ch. 14, § 26.]

When justice of other county may issue warrant.

SEC. 3185. If any person charged with an offense shall abscond or remove from the county in which such offense is alleged to have been committed it shall be lawful for any justice of the county in which such person may be found, to issue a warrant for the arrest and removal of such person to the county in which the offense is alleged to have been committed, to be there delivered to any justice of such county, who shall cause the person so delivered to be dealt with according to law, and the warrant so issued shall have the same force and effect as if issued from the county in which such offense is alleged to have been committed. [C. L. 1876, ch. 14, § 27.]

Authority of officer in executing warrant.

SEC. 3186. In executing a warrant for the arrest of a person charged with an offense, or a search warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if; after notice of his office and purpose, he be refused admittance. But this section is not intended to authorize any officer executing a search warrant to enter any house or buildng not described in the warrant. [C. L. 1876, ch. 14, § 28.]

CHAPTER 4.

EXAMINATIONS.

SECTION.
3187. Duty of officer making arrest.
3188. Adjournment of examination.
3189. Recognizance may be taken on adjournment.
3190. Proceedings on forfeiture of recognizance.
3191. Examination.
3192. Separation of witnesses.
3193. When accused discharged.

SECTION.
3194. When recognizance to be taken of witnesses.
3195. When witness required to give surety.
3196. Recognizance of married woman or minor.
3197. Witness committed in default of recognizance.
3198. Criminal docket—Transcript to district court.

Duty of officer making arrest.

SEC. 3187. Whenever any person has been arrested under a warrant, as provided in the preceding chapter, it shall be the duty of the officer making the arrest to take the person so arrested before the proper justice; and the warrant by virtue of which the arrest was made, with a proper return indorsed thereon and signed by the officer, shall be delivered to such justice. [C. L. 1876, ch. 14, § 29.]

Adjournment of examination.

SEC. 3188. If it shall become necessary, for any just cause, to adjourn the examination of any person brought before the justice, as set forth in the preceding section, it shall be lawful for such justice to adjourn such examination, and commit such person from time to time for safe keeping to the jail of the county, until the cause of delay be removed, and no longer. [S. L. 1884, ch. 40, § 1.]

Recognizance may be taken on adjournment.

SEC. 3189. When it shall become necessary to adjourn any trial according to the provisions of the preceding section, the person accused may enter into a recognizance before the justice with good and sufficient security, to be approved by the justice in such amount as he shall deem reasonable, conditioned for the appearance of such person before said justice, at a place and day and hour in said recognizance specified; *Provided*, That no person shall be let to bail, who is charged with an offense not bailable under the laws of this territory. [C. L. 1876, ch. 14, § 31. S. L. 1884, ch. 40. § 1.]

Proceedings on forfeiture of recognizance.

SEC. 3190. If any person recognized agreeably to the preceding section shall fail to appear at the time appointed, or shall otherwise fail to comply with the conditions of the recognizance, the justice shall declare the same forfeited, and transmit a transcript of his proceedings in the case, together with the recognizance, to the clerk of the proper court; and such proceedings shall be had thereon by said court as shall be deemed expedient, and as if the recognizance had been taken in said court. [C. L. 1876, ch. 14, § 32.]

Examination.

SEC. 3191. When the accused is brought before the justice and there is no plea of guilty, he shall, as soon as may be, in the presence of the accused, inquire into the complaint. [C. L. 1876, ch. 14, § 34.]

Separation of witnesses.

SEC. 3192. The justice, if requested, or if he see good cause therefor, shall order that the witnesses on both sides shall be examined, each one separate from all the others, and that the witnesses for, may be kept separate from the witnesses against the acccused during the examination. [C. L. 1876, ch. 14, § 35.]

When accused discharged.

SEC. 3193. If, upon the whole examination, ita ppears that there has been no offense committed, or that there is not probable cause for holding the prisoner to answer the offense, he shall be discharged. [C. L. 1876, ch. 14, § 36.]

When recognizance to be taken of witnesses.

SEC. 3194. If it shall appear that an offense has been committed, and there is probable cause to believe the prisoner guilty, the justice shall bind by recognizance such witnesses against the prisoner, as he shall deem necessary, and such witnesses on part of the defense as the defendant may request, to appear and testify before the court having cognizance of the offense, on the first day of the next term thereof, and not to depart from such court without leave. If the court is in session they shall be recognized to appear forthwith, but no recognizance requiring such witnesses to appear at the next term shall be invalid from the fact that the court is in session. [C. L. 1876, ch. 14, § 37.]

When witness required to give surety.

SEC. 3195. When the justice is satisfied that there is reason to believe that any such witness will not perform the condition of his own recognizance, he may, when the offense charged is a felony, order him to recognize with sufficient sureties. [C. L. 1876, ch. 14, § 38.]

Recognizance of married woman or minor.

SEC. 3196. Any person may recognize for a married woman or minor to appear as a witness, or the justice may take the recognizance of either in a sum not exceeding one hundred dollars, which shall be valid notwithstanding the disability of coverture or minority. [C. L. 1876, ch. 14, § 39.]

Witness committed in default of recognizance.

SEC. 3197. If any witness so required to enter into a recognizance, refuse to comply with such order, the justice shall commit him or her to jail until he or she comply with such order, or be otherwise discharged according to law. [C. L. 1876, ch. 14, § 40.]

Criminal docket—Transcript to district court.

SEC. 3198. It shall be the duty of every justice in criminal proceedings to keep a docket thereof, as in civil cases. All recognizances taken under this chapter, together with a transcript of the proceedings where the defendant is held to answer, shall be certified and returned forthwith to the clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of the costs that have accrued, and the items composing the same. [S. L. 1876, ch. 14, § 41.]

CHAPTER 5.

BAIL.

SECTION.
3199. Condition of recognizance.
3200. Condition when court in session.
3201. Accused may be held for higher offense.
3202. When accused committed.
3203. Clerk to make record of recognizance.
3204. Prisoner may be admitted to bail.
3205. Deposit of recognizance and release of prisoner.
3206. When sheriff may take recognizance in misdemeanor.
3207. Return of writ and recognizance.
3208. Court to fix amount of bail in felonies.
3209. Amount to be indorsed on warrant.
3210. Officer to take recognizance.
3211. Surety may surrender defendant.
SECTION.
3212. Surrender of defendant in vacation.
3213. Execution of recognizance in vacation.
3214. Forfeiture of recognizance and entry of default.
3215. Procedure in obtaining judgment on forfeited recognizance.
3216. Application of last two sections.
3217. Court may remit or reduce penalty.
3218. Remission after judgment on surrender of defendant.
3219. Technical defects in recognizance disregarded.
3220. Bail bond—Amount and condition—By whom taken.

Condition of recognizance.

SEC. 3199. If the offense for which the prisoner is held to answer be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable, on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged. [C. L. 1876, ch. 14, § 42.]

Condition when court in session.

SEC. 3200. If the court to which the accused is recognized to appear is in session, the condition of the recognizance shall be that he shall appear at such court forthwith, and not depart therefrom without leave; but no recognizance requiring the accused to appear at the next term shall be rendered invalid by the fact that the court is in session. [C. L. 1876, ch. 14, § 43.]

Accused may be held for higher offense.

SEC. 3201. If, on examination, it shall appear to the justice that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor. [C. L. 1876, ch. 14, § 44.]

When accused committed.

SEC. 3202. If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law. [C. L. 1876, ch. 14, § 45.]

Clerk to make record of recognizance.

SEC. 3203. When a transcript or recognizance shall be returned to the clerk, it shall be his duty to enter the cause upon the docket of the court, together with the date of the filing of the transcript and recognizance, the date and amount of the recognizance, the names of the sureties and the costs; whereupon the same shall be considered as of record in such court, and proceeded on by process issuing out of said court, in the same manner as if such recognizance had been entered into before such court, and the recognizance shall be recorded in full in the journal of said court, in the same manner as recognizances taken in said court. [C. L. 1876, ch. 14, § 46.]

Prisoner may be admitted to bail.

SEC. 3204. When any person, charged with the commission of any bailable offense, shall be confined in jail, whether committed by warrant under the hand and seal of any judge or justice, or by the sheriff or coroner, under any warrant upon indictment found, it shall be lawful for any judge of the supreme court within his district, or probate judge within his county, to admit such person to bail, by recognizing such person in such sum and with such sureties as to such judge shall seem proper, conditioned for his appearance before the proper court, to answer the offense wherewith he may be charged; and for taking such bail the judge may, by his special warrant, under his hand and seal, require the sheriff or jailor to bring such accused before him at the court house of the proper county, or some other place named by him, at such time as in such warrant, the judge may direct. [C. L. 1876, ch. 14, § 47.]

Deposit of recognizance and release of prisoner.

SEC. 3205. In all cases, when a judge or examining court shall recognize a prisoner under the provisions of the four preceding sections, he shall forthwith deposit with the clerk of the proper court the recgnizance so taken, and also a warrant directed to the jailor, requiring him to discharge the prisoner. [C. L. 1876, ch. 14, § 48.]

When sheriff may take recognizance in misdemeanors.

SEC. 3206. When any sheriff or other officer shall be charged with the execution of a warrant issued on any indictment for a misdemeanor, he shall, during the vacation of the court from which the writ issued, have authority to take the recognizance of the person so indicted, together with sufficient sureties, resident and property holders in the county from which such writ was issued, in a sum of not less than fifty nor more than five hundred dollars, conditioned for the appearance of such person on the first day of the next term of such court. [C. L. 1876, ch. 14, § 48.]

As to amount and manner of taking bail, see also, § 3220.

Return of writ and recognizance.

SEC. 3207. The sheriff or other officer shall return the said writ according to the command thereof, with the name of the surety, or sureties, together with the recognizance taken as aforesaid, and the recognizance so taken and returned shall be filed and recorded by the clerk of the court to which the same was returned, and may be proceeded on in the same way as if such recognizance had been taken in said court during term time. [C. L. 1876, ch. 14. § 50.]

Court to fix amount of bail in felonies.

SEC. 3208. When any person shall have been indicted for a felony, and the person so indicted shall not have been arrested or recognized to appear before the court, the court may, at their discretion, make an entry of the cause on their journal, and may order the amount in which the party indicted may be recognized for his appearance by any officer charged with the duty of arresting him. [C. L. 1876, ch. 14, § 51.]

Amount to be indorsed on warrant.

SEC. 3209. The clerk issuing a warrant on such an indictment, shall indorse thereon the sum in which the recognizance of the accused was ordered, as aforesaid, to be taken. [C. L. 1876, ch. 14, § 52.]

Officer to take recognizance.

SEC. 3210. The officer charged with the execution of the warrant aforesaid, shall take the recognizance of the party accused in the sum ordered as aforesaid, together with good and sufficient sureties conditioned for the appearance of the accused at the return of the writ, before the court out of which the same issued, and such officer shall return such recognizance to said court to be recorded and proceeded on as provided in this chapter. [C. L. 1876, ch. 14, § 53.]

Clerk may take bail bond, see § 3220.

Surety may surrender defendant.

SEC. 3211. When any person who is surety in a recognizance for the appearance of any defendant before any court in this territory, desires to surrender the defendant, he shall, by delivering the said defendant in open court, be discharged from any further responsibility on said recognizance; and the said defendant shall be committed by the court to the jail of the county, unless he shall give a new recognizance, with good and sufficient sureties, in such amount as the court may determine, conditioned as the original recognizance. [C. L. 1876, ch. 14, § 54].

Surrender of defendant in vacation.

SEC. 3212. When the surety desires to deliver up the defendant in vacation, the surrender shall be made of such defendant to any judge of the court before which he shall have been recognized to appear, or to the sheriff, or to the probate judge of the proper county, and shall be made in the court house of such county; and, upon such surrender being made, it shall be lawful for the judge to make out, sign and deliver to the sheriff, or some constable of the county, a warrant for the commitment of such defendant to the jail of the county, unless he shall immediately enter into a recognizance, with sufficient sureties, according to the original recognizance, which recognizance said judge shall take and approve, and return to the clerk of the court to which the defendant was originally recognized, to be proceeded on, the same as if it had been taken in term time. [C. L. 1876, ch. 14, § 55.]

Execution of recognizance in vacation.

SEC. 3213. All recognizances taken during vacation by any justice or other officer authorized to take them, shall be signed and sealed by the parties, and certified to by the officer taking the same. [C. L. 1876, ch. 14, § 56.]

Forfeiture of recognizance and entry of default.

SEC. 3214. Whenever any person under recognizance or bail bond, in any criminal prosecution, either to appear and answer or testify in any court, shall fail to perform the condition of such recognizance or bail bond, his default shall be recorded and the recognizance or bail bond forfeited in open court. [S. L. 1886, ch. 103, § 1.]

Procedure in obtaining judgment on forfeited recognizance.

SEC. 3215. Whenever any such recognizance or bail bond shall have been forfeited as aforesaid, such forfeiture shall accrue to the county in which such recognizance or bail bond was taken, and it shall be the duty of the court in which such forfeiture is entered, to forthwith make an order that a rule to show cause why judgment should not be rendered upon such forfeited recognizance or bail bond be issued out of said court, which rule shall be served upon the parties who have executed such forfeited recognizance or bail bond as principal or surety, at least five days before the time fixed to make answer thereto. Service of such rule to show cause may be made within the jurisdiction of the court in the same manner as the service of a summons in a civil action in the district court, and such service may be made personally out of the jurisdiction of the court; if upon proper service of such rule to show cause, the the parties so served fail to make any showing or answer thereto, or in the judgment of the court make an insufficient showing or answer, it shall be the duty of the court on the day fixed to make answer to said rule, or on any day to which the proceedings may be adjourned, to render judgment against the parties upon whom proper service has been made, for the penalty of such forfeited recognizance or bail bond except as modified by section thirty-two hundred and seventeen, and for the costs of the proceedings herein provided for; such judgment may be collected by execution as in other cases. [S. L. 1886, ch. 103, § 2.]

Application of last two sections.

SEC. 3216. The last two preceding sections shall apply to all recognizances and bail bonds taken and approved after March twelfth, eighteen hundred and eighty-six, but all forfeitures arising upon recognizances or bail bonds executed and approved before that time shall be prosecuted under the provisions of the laws then in existence in relation thereto. [S. L. 1886, ch. 103, § 3.]

Court may remit or reduce penalty.

SEC. 3217. The court in which the action for the penalty of any forfeited recognizance is brought, may remit, or reduce, any part, or the whole of such penalty, and may render judgment thereon according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable. [C. L. 1876, ch. 14, § 59.]

Remission after judgment on surrender of defendant.

Sec. 3218. Whenever any judgment shall have been rendered against the defendants for the whole or any part of the penalty of a forfeited recognizance, as aforesaid, the court rendering said judgment shall have power to remit or reduce the amount thereof, when it shall be made to appear that, after the rendition thereof, the accused had been arrested and surrendered to the proper court to be tried on such charge. [C. L. 1876, ch. 14, § 60.]

Technical defects in recognizance disregarded.

Sec. 3219. No action brought on any recognizance shall be barred or defeated, nor shall judgment thereon be reversed by reason of any neglect or omission to note or record the default, nor by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or officer before whom it was taken was authorized by law to require and take such recognizance. [C. L. 1876, ch. 14, § 61.]

Bail bond—Amount and condition—By whom taken.

Sec. 3220. When any person is indicted in any of the courts of this territory, it shall be the duty of the court to fix the amount of bail in each case, wherein the offense is bailable, and when the person so indicted shall have been arrested, the clerk of the court shall have authority to take a bond signed by the person so indicted, together with one or more sufficient sureties, resident and property holders in the county wherein the indictment was found, conditioned for the appearance of such person at such term of court from day to day, or any future day of said term, and when any such case is continued to a subsequent term, or when any person is arrested on an indictment, subsequent to the final adjournment of the term of court at which such indictment was found, the clerk or judge shall have authority to take bail in the manner hereinbefore provided for the appearance of the defendant at the next term of court. [S. L. 1879, ch. 9, § 1.]

CHAPTER 6.

GRAND JURY PROCEEDINGS.

SECTION.
3221. Clerk to make lists of persons committed or bailed.
3222. Number of jurors—Foreman.
3223. Oath of foreman.
3224. Oath of jurors.
3225. Charge of court—Jurisdiction of jury.
3226. Prosecuting attorney may appear before jury—Restrictions.
3227. Process for witnesses.
3228. Witnesses to be sworn.
3229. Proceedings on refusal of witness to testify.
3230. Court may compel witness to answer.
3231. Filling vacancy in grand jury.
SECTION.
3232. Court may empanel new grand jury.
3233. Finding of certain indictments not to be disclosed.
3234. Proceedings of grand jury not to be disclosed.
3235. Finding, indorsement and signing of indictment.
3236. Indorsement in case of misdemeanor.
3237. When prosecuting witness liable for costs.
3238. Examination of jail and report.
3239. Presentation and filing of indictment.
3240. When prisoner discharged if not indicted.
3241. Publication of grand jury's report.

Clerk to make lists of persons committed or bailed.

Sec. 3221. Before the first day of each term of a court at which a grand jury shall be summoned to appear, the clerk of such court shall make out two lists, on which he shall enter the names of all the persons who appear by the returns of the justice to have been either committed or bailed for an offense during the vacation of such court, the name of the justice who committed or bailed, and distinguishing whether such person was committed or bailed; one of these lists shall be delivered by the judge to the foreman of the grand jury, and the other, together with all the transcripts and other documents, returned by the justices, shall be delivered to the prosecuting attorney. [C. L. 1876, ch. 14, § 62.]

Number of jurors—Foreman.

SEC. 3222. When the grand jury shall be impaneled, the court shall appoint one of the number, foreman; such jury shall consist of sixteen members. [C. L. 1876, ch. 14, § 63. S. L. 1886, ch. 114, § 11.]

Oath of foreman.

SEC. 3223. When the foreman shall be appointed, an oath or affirmation shall be administered to him in the following words: "You, as foreman of this grand inquest, do solemnly swear (or affirm) that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service. The counsel of the territory, your own and your fellows you shall keep secret, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred or ill will, nor shall you leave any person unpresented through fear, favor or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding." [C. L. 1876, ch. 14, § 64.]

Oath of urors.

SEC. 3224. Thereupon the following oath (or affirmation) shall be administered to the other grand jurors: "The same oath which A. B., your foreman, hath now taken before you on his part, you and each of you shall well and truly observe and keep on your respective parts." [C. L. 1876, ch. 14, § 65.]

Charge of court—Jurisdiction of jury.

SEC. 3225. The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he is by law required to specially charge. After the charge of the court, the grand jury shall retire with the officer appointed to attend to them, and shall proceed to inquire of, and present all offenses whatever, committed within the limits of the county, in and for which they were impaneled and sworn or affirmed. [C. L. 1876, ch. 14, § 66.]

Court shall charge grand jury concerning county jail, see § 1367.

Prosecuting attorney may appear before jury—Restrictions.

SEC. 3226. The prosecuting attorney, or the assistant prosecuting attorney, shall be allowed at all times to appear before the grand jury for the purpose of giving information relative to any matter cognizable by them, or giving them advice upon any legal matter when they may require it, and he may be permitted to interrogate witnesses before them when they or he shall deem it necessary; but no such attorney, nor any other person, shall be permitted to be present during the expression of their views, or the giving of their votes on any matter before them. [C. L. 1876, ch. 14, § 67.]

Process for witnesses.

SEC. 3227. Whenever required by the grand jury, or the prosecuting attorney, the clerk of the court in which such jury is impaneled, shall issue subpœnas and other process to bring witnesses to testify before such grand jury. [C. L. 1876, ch. 14, § 68.]

Witnesses to be sworn.

SEC. 3228. Before any witness shall be examined by the grand jury, an oath or affimation shall be administered to him by the foreman. [C. L. 1876, ch. 14, § 69.]

Proceedings on refusal of witness to testify.

SEC. 3229. If any witness appearing before a grand jury shall refuse to answer any interrogatories during the course of his examination, the fact shall be communicated to the court in writing, in which the question refused to be answered shall be stated, together with the excuse for the refusal, if any be given by the person interrogated; and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision. [C. L. 1876, ch. 14, § 70.]

Court may compel witness to answer.

SEC. 3230. If the court determine that the witness is bound to answer, and he persists in his refusal, he shall be brought before the court, who shall proceed in the same manner as if the witness had been interrogated and refused to answer in open court. [C. L. 1876, ch. 14, § 71.]

Filling vacancy in grand jury.

SEC. 3231. In case of the sickness, death, discharge or non-attendance of any grand juror, after the grand jury shall be affirmed or sworn, it shall be lawful for the court to cause another to be sworn or affirmed in his stead. [C. L. 1876, ch. 14, § 72. S. L. 1886, ch. 114, § 23.]

Court may empanel new grand jury.

SEC. 3232. After the discharge of the grand jury, it shall be lawful for the court, when it shall be deemed necessary, to order a new grand jury, to be drawn, which shall be drawn, summoned, returned and sworn or affirmed, and shall proceed in the same manner in all respects, as provided by law in respect to grand juries. [C. L. 1876, ch. 14, § 73. S. L. 1886, ch. 114, § 23.]

Finding of certain indictments not to be disclosed.

SEC. 3233. No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed and the case docketed. [C. L. 1876, ch. 14, § 74.]

Proceedings of grand jury not to be disclosed.

SEC. 3234. No grand juror shall be allowed to state or testify in any court in what manner he or other members of the grand jury voted on any question before them, or what opinion was expressed by any juror in relation to such question. [C. L. 1876, ch. 14, § 75.]

Finding, indorsement and signing of indictment.

SEC. 3235. At least twelve of the grand jurors must concur in the finding of an indictment. When so found the foreman shall indorse on such indictment the words, "A true bill," and subscribe his name thereto as foreman. Twelve jurors shall be competent to act, and if but twelve, all must concur in finding a bill of indictment, and the prosecuting attorney shall sign the bill. [C. L. 1876, ch. 14, § 76.]

Indorsement in case of misdemeanor.

SEC. 3236. No indictment for any misdemeanor shall be found a true bill by any grand jury, unless the name of the prosecuting witness shall be indorsed thereon, except such bill be found upon testimony sworn and sent to the grand jury by order of the court, at the request of the prosecuting attorney or of the grand jury, in which case the fact that the bill was so found, shall be indorsed on the bill, instead of the name of the prosecutor. [C. L. 1876, ch. 14, § 77.]

When prosecuting witness liable for costs.

SEC. 3237. In all cases where the name of the prosecuting witness is indorsed on the bill, and the same is found a true bill by the grand jury, and upon trial the defendant is acquitted, the prosecuting witness shall be liable for costs, if it shall appear that the prosecution was malicious or without justifiable cause. [C. L. 1876, ch. 14, § 78.]

Examination of jail and report.

SEC. 3238. The grand jury shall, once at each term of the court at which they may be in attendance, visit the county jail, examine its state and condition, and inquire into the discipline and treatment of the prisoners, their habits, diet and accommodations; and it shall be their duty to report to the said court, in writing, if the regulations of the county jails have been violated, pointing out particularly in what said violation, if any, consists. [C. L. 1876, ch. 14, § 79.]

Presentation and filing of indictment.

SEC. 3239. Indictments found by a grand jury shall be presented by their foreman to the court in the presence of the jury, and shall be filed with the clerk, who shall indorse thereon the day of their filing, and shall enter each case upon the appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested. [C. L. 1876, ch. 14, § 80.]

When prisoner discharged if not indicted.

SEC. 3240. Any person held in jail, charged with an indictable offense, shall be discharged if he be not indicted at the term of the court at which he is held to answer, unless it shall appear to the satisfaction of the court that the witnesses on the part of the territory have been enticed or kept away, or are detained and prevented from attending court by sickness or some inevitable accident. [C. L. 1876, ch. 14, § 81.]

Publication of grand jury's report.

SEC. 3241. At the close of the term or before, if so ordered, the clerk of the district court in and for each county shall furnish a copy of the report of the grand jury to a newspaper published in said county, if there be one, for publication, and payment for the same shall be paid by the county commissioners of said county by a warrant on the treasurer. [S. L. 1877, p. 93, § 3.]

CHAPTER 7.

INDICTMENTS AND PROCESS THEREON.

SECTION.
3242. Election required when different indictments for same offense.
3243. Place of indictment for receiving stolen goods.
3244. Defects which do not invalidate indictment.
3245. Certain variance not ground for acquittal.
3246. Requisites of indictment for murder and manslaughter.
3247. Description of forged instrument.
3248. Description of counterfeit instrument or apparatus.
3249. Description of other instrument.
SECTION.
3250. Allegation and proof of intent to defraud.
3251. Allegation of joint ownership.
3252. Sufficiency of indictment for election offense.
3253. Joinder of other offenses in indictment for larceny.
3254. Description and proof of money, etc.
3255. Warrant on indictment, when issued and how executed.
3256. Warrant may be issued to another county.
3257. Custody of convict indicted while in penitentiary.

Election required when different indictments for same offense.

SEC. 3242. If there be at any time pending against the same defendant two or more indictments for the same criminal act, the prosecuting attorney shall be required to elect upon which he will proceed, and upon trial being had thereon the remaining indictment or indictments shall be quashed. [C. L. 1876, ch. 14, § 82.]

Place of indictment for receiving stolen goods.

SEC. 3243. Whenever any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted in any county where he received or had such property, notwithstanding the theft was committed in another county. [C. L. 1876, ch. 14, § 83.]

Defects which do not invalidate indictment.

SEC. 3244. No indictment shall be deemed invalid, nor shall the trial, judgment or other proceedings be stayed, arrested or in any manner affected:

First—By the omission of the words "with force and arms," or any words of similar import; or,

Second—By omitting to charge any offense to have been contrary to a statute or statutes; or, *Third*—For the ommission of the words, "as appears by the record," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a statement of the value or price of any matter or thing or the amount of damages or injury in any case where the value or price or the amount of damages or injury is not of the essence of the offense; nor for the want of an allegation of the time and place of any material fact, when time and place have once been stated in the indictment; nor that dates and numbers are represented by figures; nor for an omission to allege that the grand jurors were impaneled, sworn or charged; nor for any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime or person charged; nor for want of the averment of any matter not necessary to be proved; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [C. L. 1876, ch. 14, § 84.]

Certain variance not ground for acquittal.

SEC. 3245. Whenever, on the trial of any indictment for any offense, there shall appear to be any variance between the statement in such indictment, and the evidence offered in proof thereof in the christian name or surname, or both christian name and surname, or other description whatever, of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had, shall find that such variance is material to the merits of the case or may be prejudicial to the defendant. [C. L. 1876, ch. 14, § 85.]

Requisites of indictment for murder and manslaughter.

SEC. 3246. In any indictment for murder in the first degree, or murder in the second degree, or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death was caused, but it shall be sufficient to charge in any indictment for murder in the first degree that the defendant did wilfully, deliberately and of his malice aforethought, premeditatedly kill and murder the deceased; and in like manner in any indictment for murder in the second degree it shall be sufficient to charge that the defendant did purposely and maliciously kill and murder the deceased; and in like manner, in any indictment for manslaughter, it shall be sufficient to charge that the defendant did unlawfully kill and slay the deceased. [S. L. 1884, ch 39, § 1.]

Description of forged instrument.

SEC. 3247. In any indictment for falsely making, altering, forging, printing, photographing, uttering, disposing of, or putting off any instrument, it shall be sufficient to set forth the purport and value thereof. [C. L. 1876, ch. 14, § 87.]

Description of counterfeit instrument or apparatus.

SEC. 3248. In any indictment for engraving or making the whole or any part of any instrument, matter or thing, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing, shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing, shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing, by any name or designation by which the same may be usually known. [C. L. 1876, ch. 14, § 88.]

Description of other instrument.

SEC. 3249. In all other cases, whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof. [C. L. 1876, ch. 14, § 89.]

Allegation and proof of intent to defraud.

SEC. 3250. It shall be sufficient in any indictment where it shall be necessary to allege an intent ~~to~~ defraud, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person or body corporate, and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged, with the intent to defraud. [C. L. 1876, ch. 14, § 90.]

Allegation of joint ownership.

SEC. 3251. When any offense shall be committed upon, or in relation to any property, belonging to several partners or owners, the indictment for such offense shall be deemed sufficient, if it allege such property belonged to any one or more of such partners or owners, without naming all of them. [C. L. 1876, ch. 14, § 91.]

Sufficiency of indictment for election offense.

SEC. 3252. When an offense shall be committed in relation to any election, an indictment for such offense shall be deemed sufficient if it allege that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filled at such election. [C. L. 1876, ch. 14, § 92.]

Joinder of other offenses in indictment for larceny.

SEC. 3253. An indictment for larceny may contain also a count for obtaining the same property by false pretenses, or a count for embezzlement thereof, and for receiving or concealing the same property, knowing it to have been stolen; and the jury may convict of either offense, and may find all or any of the persons indicted, guilty of either of the offenses charged in the indictment. [C. L. 1876, ch. 14, § 93.]

Description and proof of money, etc.

SEC. 3254. In every indictment in which it shall be necessary to make any averment as to any money, gold dust, retort of gold or silver, current by custom and usage as money, or bank bills or notes, United States treasury notes, postal and fractional currency, or other bills, bonds, or notes issued by lawful authority, and intended to pass and circulate as money, it shall be sufficient to describe such money or bills, notes, currency or bonds, gold dust or retort, current by custom or usage, simply as money, without specifying any particular coin, note, bill or bond; and such allegation shall be sustained by proof of any amount of coin, or of any such note, bill, currency or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency or bond, shall not be proved. [C. L. 1876, ch. 14, § 94.]

Warrant on indictment, when issued and how executed.

SEC. 3255. A warrant may be issued in term time, or in vacation of court, on an indictment found in any county, and when directed to the sheriff of the county in which such indictment was found, it shall be lawful for such officer to arrest the accused named in such warrant, in any county where he may reside, and commit him to jail or hold him to bail as provided in this title. [C. L. 1876, ch. 14, § 95.]

Warrant may issue to another county.

SEC. 3256. When the party accused shall reside out of the county in which such indictment was found, it shall be lawful to issue a warrant thereon, directed to the sheriff of the county where the accused shall reside or may be found; and it shall be the duty of such officer to arrest the accused and convey him to the county from which such writ was issued, and there commit him to the jail of said county, or hold him to bail, as provided in the preceding section. [C. L. 1876, ch. 14, § 96.]

Custody of convict indicted while in penitentiary.

Sec. 3257. Whenever any convict in the penitentiary shall be indicted for any offense committed while confined therein, said convict shall remain in the custody of the warden of said penitentiary, subject to the order of the court in which the indictment may be found. [C. L. 1876, ch. 14, § 211.]

CHAPTER 8.

PLEAS TO INDICTMENT—ARRAIGNMENT—CHANGE OF VENUE.

SECTION.
3258. When defendant to be served with copy of indictment
3259. Assignment of counsel for indigent prisoners.
3260. Time allowed for examination of indictment.
3261. Exceptions to indictment.
3262. Defects reached by motion to quash.
3263. Plea in abatement.
3264. Causes of demurrer.
3265. When defendant held after indictment quashed.
3266. Certain defects waived by pleading.
SECTION.
3267. Misnomer—Plea in abatement.
3268. Demurrer and reply to plea in abatement.
3269. Accused may plead after demurrer.
3270. Arraignment of accused.
3271. Plea in bar—Reply—Trial of issue.
3272. Pleas in bar and abatement to be in writing, etc.
3273. When accused to plead to the merits.
3274. Proceedings on plea of guilty.
3275 Proceedings on plea of not guilty.
3276. Proceedings when venue changed.
3277. Prisoner to be conveyed to place of trial.
3278. Witnesses to be recognized.

When defendant to be served with copy of indictment.

Sec. 3258. It shall be the duty of the clerk of the court in which an indictment for felony is filed, within three days after the same has been filed, to make a copy thereof, and deliver the same to the sheriff, whose duty it shall be to serve the same on the accused when in jail, and if on bail, said copy may be given to the defendant or his attorney, and no one shall be, without his assent, arraigned or called on to answer to any indictment for felony, until one day shall have elapsed after the copy has been served upon him as aforesaid. [C. L. 1876, ch. 14, § 97.]

Assignment of counsel for indigent prisoners.

Sec. 3259. After a copy of the indictment has been served upon the defendant, the accused shall be brought into court; and if he be without counsel and unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the accused at all reasonable hours. [C. L. 1876, ch. 14, § 98.]

For fees of attorneys assigned to defend indigent prisoners see § 141.

Time allowed for examination of indictments.

Sec. 3260. Thereupon the court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto. [C. L. 1876, ch. 14, § 99.]

Exceptions to indictments.

Sec. 3261. The accused may except to an indictment by:

First—A motion to quash;

Second—A plea in abatement;

Third—A demurrer. [C. L. 1876, ch. 14, § 100.]

Defects reached by motion to quash.

Sec. 3262. A motion to quash may be made in all cases when there is a defect apparent upon the face of the record, including defects in form of the indictment or in the manner in which an offense is charged. [C. L. 1876, ch. 14, § 101.]

Plea in abatement.

SEC. 3263. A plea in abatement may be made when there is a defect in the record, which is shown by facts extrinsic thereto. [C. L. 1876, ch. 14, § 102.]

Causes of demurrer.

SEC. 3264. The accused may demur when the facts stated in the indictment do not constitute an offense punishable by the laws of this territory, or when the intent is not alleged, when proof of it is necessary to make out the offense charged. [C. L. 1876, ch. 14, § 103.]

When defendant held after indictment quashed.

SEC. 3265. When a motion to quash, or a plea in abatement has been adjudged in favor of the accused, he may be committed or held to bail, in such sum as the court may require, for his appearance at the first day of the next term of said court, unless the grounds upon which the same was quashed are such that a new indictment cannot cure the defect. [C. L. 1876, ch. 14, § 104.]

Certain defects waived by pleading.

SEC. 3266. The accused shall be taken to have waived all defects which may be excepted to by a motion to quash, or a plea in abatement, by demurring to an indictment, or pleading in bar, or not guilty. [C. L. 1876, ch. 14, § 105.]

Misnomer—Plea in abatement.

SEC. 3267. If the accused shall plead in abatement that he is not indicted by his true name, he must plead what his true name is, which shall be entered on the minutes of the court, and after such entry, the trial and all other proceedings on the indictment shall be had against him by that name, referring also to the name by which he is indicted, in the same manner in all respects as if he had been indicted by his true name. [C. L. 1876, ch. 14, § 106.]

Demurrer and reply to plea in abatement.

SEC. 3268. To any plea in abatement, the prosecuting attorney may demur if it is not sufficient in substance, or he may reply, setting forth any facts which may show that there is no defect in the record as charged in the plea. [C. L. 1876, ch. 14, § 107.]

Accused may plead after demurrer.

SEC. 3269. After a demurrer to an indictment has been overruled, the accused may plead "not guilty" or in bar. [C. L. 1876, ch. 14, § 108.]

Arraignment of accused.

SEC. 3270. The accused shall be arraigned by reading to him the indictment, and the court shall ask him, "are you guilty, or not guilty, of the offense therein charged." [C. L. 1876, ch. 14, § 109.]

Plea in bar—Reply—Trial of issue.

SEC. 3271. The accused may then offer a plea in bar to the indictment that he has before had judgment of acquittal, or been convicted, or been pardoned for the same offense; and to this plea the prosecuting attorney may reply that there is no record of such acquittal or conviction, or that there has been no pardon, and on the trial of such issue to a jury, the accused must produce the record of such conviction or acquittal, or the pardon, and prove that he is the same person charged in the record or mentioned in the pardon, and shall be permitted to adduce such other evidence as may be necessary to establish the identity of the offense. [C. L. 1876, ch. 14, § 110.]

Pleas in bar and abatement to be in writing, etc.

SEC. 3272. No plea in bar or abatement shall be received by the court unless it be in writing, signed by the accused and sworn to before some competent officer. [C. L. 1876, ch. 14, § 111.]

When accused to plead to the merits.

SEC. 3273. If the issue on the plea in bar be found against the defendant, or if upon the arraignment the accused offer no plea in bar, he shall answer the question propounded by the court, by pleading "guilty" or "not guilty;" but if he answer evasively or stand mute, he shall be taken to have pleaded "not guilty." [C. L. 1876, ch. 14, § 112.]

Proceedings on plea of guilty.

SEC. 3274. If the accused plead "guilty," the plea shall be recorded on the indictment and in the records of the court, and the accused shall be committed until sentence. [C. L. 1876, ch. 14, § 113.]

Proceedings on plea of not guilty.

SEC. 3275. If the accused plead "not guilty," the plea shall be entered on the indictment, and the prosecuting attorney shall, under the direction of the court, designate a day for trial, which shall be a day of the term at which the plea is made, unless the court for good reasons continue the case to a subsequent term, upon the application of the defendant, or the prosecuting attorney, and in no case shall a defendant be required to swear that he is "not guilty," on an application for a continuance. [C. L. 1876, ch. 14, § 114.]

For provisions regulating continuances, see §§ 3397-3399.

Proceedings when venue changed.

SEC. 3276. When the venue is changed to an adjoining county, the clerk of the county in which the indictment was found, shall make out a certified transcript of all proceedings in the case, which, together with the original indictment, he shall transmit to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which venue has been changed. The costs accruing from a change of venue shall be paid by the county in which the indictment was found. [C. L. 1876, ch. 14, § 116.]

For provisions regulating change of venue, see §§ 3400-3409.

Prisoner to be conveyed to place of trial.

SEC. 3277. When a court has ordered a change of venue, a warrant shall be issued by the clerk, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law. [C. L. 1876, ch. 14, § 117.]

Witnesses to be recognized.

SEC. 3278. When a change of venue is allowed, the court shall recognize the witnesses on the part of the territory to appear before the court in which the prisoner is to be tried. [C. L. 1876, ch. 14, § 118.]

CHAPTER 3.

JURIES AND CHALLENGES.

SECTION.
3279. Jury to try accused.
3280. Peremptory challenges by accused.
3281. Challenges by prosecution—Challenges for cause—Triers.
3282. Causes for challenge.
3283. Certain opinions not cause of challenge.
SECTION.
3284. Trial of challenge by court.
3285. Separate peremptory challenges by each defendant.
3286. Oath of jury.
3287. Affirmation of juror.

Jury to try accused.

SEC. 3279. In all criminal cases the jury summoned and impaneled according to the laws in force, relating to the summoning or impaneling of juries in other cases, shall try the accused. [C. L. 1876, ch. 14, § 119.]

Peremptory challenges by accused.

SEC. 3280. Every person charged with the commission of an offense the punishment whereof is capital, may challenge twelve persons, returned as jurors, peremptorily. In all cases of felony not punishable capitally, the defendant shall have eight peremptory challenges, and in cases of misdemeanor, four peremptory challenges. [S. L. 1884, ch. 38, § 1.]

Challenges by prosecution—Challenges for cause—Triers.

SEC. 3281. The prosecuting attorney shall have six peremptory challenges in capital cases, three in other felonies and two in misdemeanors. Challenge for cause lies with both the defendant and prosecutor. The court shall in all cases where the punishment of death does not follow conviction, try the validity of such challenge. In capital cases, three triers, with the qualifications of jurors, to be appointed by the court, who shall be the sole judges of the fact whether the juror stands impartial between the defendant and the people, and such triers shall examine the person presented, as sworn upon his oath, and may receive other evidence, if necessary, to aid them in arriving at a proper conclusion as to such juror's competency. [S. L. 1884, ch. 38, § 2.]

Causes for challenge.

SEC. 3282. The following shall be good cause for challenge to any person called as a juror on any indictment:

First—That he was a member of the grand jury which found the indictment;

Second—That he has formed or expressed an opinion as to the guilt or innocence of the accused, or is biased or prejudiced for or against the accused;

Third—In indictments for an offense, the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death;

Fourth—That he is a relation within the fifth degree to the person alleged to be injured, or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant;

Fifth—That he has served on a petit jury which was sworn in the same cause against the same defendant, and which jury either rendered a verdict which was set aside, or was discharged after hearing the evidence;

Sixth—That he has served as a juror in a civil case brought against the defendant for the same act;

Seventh—That he has been subpœnaed as a witness in the case;

Eighth—The same challenges for cause shall be allowed in criminal prosecutions, that are allowed to parties in civil cases. [C. L. 1876, ch. 14, § 123.]

Certain opinions not cause for challenge.

SEC. 3283. In the trial of criminal cases in any of the courts of this territory, it shall not be cause for challenge that a person called to act as a juror, has formed or expressed an opinion as to the guilt or innocence of the accused, from newspaper reports or rumor only; *Provided*, Such person swear that he can impartially try the case according to the law and evidence, notwithstanding such opinion. [C. L. 1876, ch. 70, § 1, pp. 393 and 394.]

Trial of challenge by court.

SEC. 3284. All challenges, except in capital cases as herein otherwise provided, for cause, shall be tried by the court on the oath of the person challenged, or on other evidence, and such challenge shall be made before the jury is sworn, and not afterwards. [C. L. 1876, ch. 14, § 124.]

Separate peremptory challenges by each defendant.

SEC. 3285. If two or more persons be put on trial at the same time, each must be allowed his separate peremptory challenge. [C. L. 1876, ch. 14, § 125.]

Oath of jury.

SEC. 3286. When all challenges have been made, the following oath shall be administered: "You shall well and truly try, and true deliverance make, between the people of the Territory of Wyoming and the prisoner at the bar (giving his name); so help you God." [C. L. 1876, ch. 14, § 126.]

Affirmation of juror.

SEC. 3287. Any juror shall be allowed to make affirmation, and the words: "This you do as you shall answer under the pains and penalties of perjury," shall be submitted instead of the words, "So help you God." [C. L. 1876, ch. 14, § 127.]

CHAPTER 10.

EVIDENCE.

SECTION.
3288. Defendant may testify or make statement.
3289. Process for witnesses.
3290. Service of subpœna by special deputy.
3291. Witnesses for defendant and the manner of securing them.
3292. Manner of procuring and examining witnesses.
3293. Defendant may take deposition of absent witness.
SECTION.
3294. Manner of taking and returning deposition.
3295. Discharge of accused when evidence insufficient, etc.
3296. Proof necessary in case of seduction.
3297. Proof necessary in case of perjury.
3298. Proof in case of treason.
3299. Proof in case of conspiracy.

Defendant may testify or make statement.

SEC. 3288. The defendant in all criminal cases, in all the courts in this territory, may be sworn and examined as a witness, if he so elect, but shall not be required to testify in any case. If the defendant so elect, he may make a statement to the jury without being sworn, but the neglect or refusal to make a statement shall not create any presumption against him, nor shall any reference be made to, nor shall any comment be made upon, such neglect or refusal. [S. L. 1877, p. 25, §§ 1 and 2. C. L. 1876, ch. 14, § 129.]

Process for witnesses.

SEC. 3289. In all criminal cases it shall be the duty of the clerk, upon a precipe being filed, to issue writs of subpœna for all witnesses named therein, directed to the sheriff of his county, or of any county of the territory where the witnesses reside or may be found, which shall be served and returned as in other cases, and said sheriff by writing indorsed on said writs, may depute any disinterested person to serve and return the same. [C. L. 1876, ch. 14, § 130.]

Service of subpœna by special deputy.

SEC. 3290. If the subpœna be served by such special deputy, it shall be his duty, after serving the same, to return thereon the manner in which the same was served, and also make oath or affirmation to the truth of said return before some person competent to administer oaths, which shall be indorsed on such writ, and the same shall be returned according to the command thereof by the person serving the same, through the postoffice or otherwise. [C. L. 1876, ch. 14, § 131.]

Witnesses for defendant and the manner of securing them.

SEC. 3291. Any and every defendant in a felony case may have two witnesses, as of course, at the expense of the county, where the case is being tried; said defendant shall also be entitled to two more witnesses, in addition to the above, on making and filing with the clerk of the court an affidavit setting forth that said defendant is without the means to procure such witnesses at his own expense. And he shall be entitled to more witnesses at the expense of the county; but should any such defendant require more witnesses than the four as above referred to, an affidavit of such defendant or his counsel must be filed with the clerk addressed to the court, stating that he is without the necessary means to procure them, and what other witness or witnesses are required, together with the facts expected to be proved by him or them; and should the court deem the expected evidence material to the defense; a subpœna for such as are deemed necessary by the court shall issue at public expense. [S. L. 1884, ch. 101, §§ 1 and 5. S. L. 1879., ch. 27, § 1.]

Manner of procuring and examining witnesses.

SEC. 3292. Except as otherwise provided, the provisions of the code of civil procedure, relative to compelling the attendance and testimony of witnesses, their examination and the administering of oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable. [C. L. 1876, ch. 14, § 132.]

Defendant may take deposition of absent witness.

SEC. 3293. When any issue of fact is joined on any indictment, and any material witness for the defendant resides out of the territory, or residing within the territory, is sick or infirm, or is about to leave the territory, such defendant may apply in writing to the court in term time, or to the judge thereof in vacation, for a commission to examine such witness upon interrogatories thereto annexed, and such court or judge may grant the same, and order what, and for how long a time notice shall be given the prosecuting attorney before the witness shall be examined. [C. L. 1876, ch. 14, § 133.]

Manner of taking and returning deposition.

SEC. 3294. The proceedings in taking the examination of such witness and returning it to court, shall be governed in all respects as the taking of depositions in civil cases. [C. L. 1876, ch. 14, § 134.]

Discharge of accused when evidence insufficient, etc.

SEC. 3295. When two or more persons shall be indicted together, the court may, at any time before the defendant has gone into his defense, direct any one of the defendants to be discharged, that he may be a witness for the territory. An accused party may, also, when there is not sufficient evidence to put him upon his defense, be discharged by the court; or if not discharged by the court, shall be entitled to the immediate verdict of the jury, for the purpose of giving evidence for others accused with him; such orders of discharge in either case, shall be a bar to another prosecution for the same offense. [C. L. 1876, ch. 14, § 135.]

Proof necessary in case of seduction.

SEC. 3296. In trials for taking a woman away with intent to force her to be married or defiled, and for seduction, and for seduction for the purpose of prostitution, no conviction shall be had on the evidence of the female offended against, unsupported by other evidence. [C. L. 1876, ch. 14, § 136.]

Proof necessary in case of perjury.

SEC. 3297. In trial for procuring or inciting another to commit perjury, though perjury be not committed, no conviction shall be had on the evidence of the person attempted to be influenced, unsupported by other testimony. [S. L. 1876, ch. 14, § 137.]

Proof in case of treason.

SEC. 3298. In trials for treason no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for said offense unless one overt act or more be expressly alleged therein. [C. L. 1876, ch. 14, § 138.]

Proof in case of conspiracy.

SEC. 3299. In trials for conspiracy, in cases where an overt act is required by law to consummate the offense, no conviction shall be had unless one overt act or more be expressly alleged in the indictment, nor unless one or more of the acts so alleged be proved on trial; but other overt acts not alleged in the indictment may be given in evidence on the part of the prosecution. [C. L. 1876, ch. 14, § 139.]

CHAPTER 11.

TRIAL AND EXCEPTIONS.

SECTION.
3300. Order of proceedings on the trial.
3301. When accused may be tried in his absence.
3302. Separate trials in cases of felony.
3303. When jury may have view of place.
3304. When accused held to answer for other offense.
3305. Discharge of jury without prejudice.
3306. Exceptions by defendant.
3307. Exceptions by prosecuting attorney.
SECTION.
3308. Proceedings on exceptions by prosecuting attorney.
3309. When bill filed and decision rendered.
3310. Effect of decision by supreme court.
3311. When delay in trial entitles prisoner to discharge.
3312. When delay in trial entitles bailed defendant to discharge.
3313. Limitation upon last two sections.

Order of proceedings on the trial.

SEC. 3300. After the jury has been impaneled and sworn, the trial shall proceed in the following order:

First—The counsel for the territory must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it;

Second—The defendant or his counsel may then state his defense, and may briefly state the evidence he expects to offer in support of it, or may wait until the evidence upon the part of the people is closed;

Third—The territory must first produce its evidence, the defendant will then produce his evidence;

Fourth—The territory will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, shall permit it to offer evidence in chief;

Fifth—When the evidence is concluded, either party may request instructions to the jury on the points of law, which shall be given or refused by the court; which instructions shall be reduced to writing if either party require it;

Sixth—When the evidence is concluded, unless the case is submitted without argument, the counsel for the territory shall commence, the defendant or his counsel follow, and the counsel for the territory conclude the argument to the jury;

Seventh—The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury, which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by the court if either party request it, before the argument to the jury is commenced, and such charge or charges, or any other charge or instructions provided for in this section, when so written and given, shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement, and returned with their verdict into court, and shall remain on file with the papers of the case. [C. L. 1876, ch. 14, § 140.]

When accused may be tried in his absence.

SEC. 3301. No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court, be put on trial in their absence. The request shall be in writing, and entered on the journal of the court. [C. L. 1876, ch. 14, § 141.]

Separate trials in cases of felony.

SEC. 3302. When two or more persons are indicted for a felony, each person so indicted shall, on application to the court for that purpose, be separately tried. [C. L. 1876, ch. 14, § 142.]

When jury may have view of place.

SEC. 3303. Whenever, in the opinion of the court, it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the sheriff, to the place which shall be shown to them by some disinterested person appointed by the court; while the jury are thus absent, no person other than the sheriff having them in charge, and the person appointed to show them the place, shall speak to them on any subject connected with the trial. [C. L. 1876, ch. 14, § 195.]

When accused held to answer for other offense.

SEC. 3304. When it shall appear at any time before verdict that a mistake has been made in charging the proper offense, the accused shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense on the first day of the next term of such court, and shall, if necessary, likewise recognize the witnesses to appear and testify. [C. L. 1876, ch. 14, § 143.

Discharge of jury without prejudice.

SEC. 3305. When a jury has been impaneled in a case contemplated by the preceding section, such jury may be discharged without prejudice to the prosecution. [C. L. 1876, ch. 14, § 144.]

Exceptions by defendant.

SEC. 3306. In all cases where a defendant shall deem himself aggrieved by any opinion or decision of the court, he may present his exceptions thereto, and it shall be the duty of the court to sign and seal the same, and the taking, preparing and signing and sealing of said bill shall be governed by the rules established in such matters in civil cases. Where the ground of exception is that the verdict is not sustained by sufficient evidence, or is contrary to law, and the court has overruled a motion for a new trial made on that ground, the bill of exceptions shall substantially set out the evidence. The bill of exceptions, when signed and sealed, shall be made a part of the record, and shall have the same force and effect as in civil cases. [C. L. 1876, ch. 14, § 155.]

Exceptions by prosecuting attorney.

SEC. 3307. The prosecuting attorney may take exceptions to any opinion or decision of the court during the prosecution of the cause; and the bill containing the exceptions upon being presented, shall, if it be conformable to the truth, be signed and sealed by the court, which shall be made a part of the record, and be in all respects governed by the rules established as to bills of exceptions in civil cases, except as herein provided. [C. L. 1876, ch. 60, § 146.]

Proceedings on exceptions by prosecuting attorney.

SEC. 3308. The prosecuting attorney may present such bill of exceptions to the supreme court and apply for permission to file it with the clerk thereof, for the decision of such court upon the points presented therein; but prior thereto he shall give reasonable notice to the judge who presided at the trial in which the bill was taken, of his purpose to make such application, and if the supreme court shall allow such bill to be filed, such judge shall appoint some competent attorney to argue the case against the prosecuting attorney, which attorney shall receive for his services a fee not exceeding one hundred dollars, to be fixed by such court, and to be paid out of the treasury of the county in which the bill was taken. [C. L. 1876, ch. 14, § 147.]

When bill filed and decision rendered.

SEC. 3309. If the supreme court shall be of the opinion that the questions presented should be decided upon, they shall allow the bill of exceptions to be filed and render a decision thereon. [C. L. 1876, ch. 14, § 148.]

Effect of decision of supreme court.

SEC. 3310. The judgment of the court in the case in which the bill was taken shall not be reversed nor in any manner affected, but the decision of the supreme court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may afterward arise in the territory. [C. L. 1876, ch. 14, § 149.]

When delay in trial entitles prisoner to discharge.

SEC. 3311. If any person indicted for any offense and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense, which shall be held after such indictment found, he shall be entitled to be discharged so far as relates to the offense for which he was committed, unless the delay shall happen on the application of the prisoner. [C. L. 1876, ch. 14, § 150.]

When delay in trial entitles bailed defendant to discharge.

SEC. 3312. If any person indicted for any offense, who has given bail for his appearance, shall not be brought to trial before the end of the third term of the court in which the cause is pending, held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offense, unless the delay happens on his application, or be occasioned by the want of time to try such cause at such third term. [C. L. 1876, ch. 14, § 151.]

Limitation upon last two sections.

SEC. 3313. If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied there is material evidence on the part of the territory, which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued and the prisoner remanded or admitted to bail, as the case may require. [C. L. 1876, ch. 14, § 152.]

CHAPTER 12.

VERDICT, JUDGMENT AND PROCEEDINGS THEREON.

SECTION.
3314. Application of rules in civil cases—Separation of jury.
3315. Discharge of jury before verdict without prejudice.
3316. Jury may be polled.
3317. Jury to determine value of stolen property, etc.
3318. Jury may find accused guilty of lesser offense.
3319. Defendant to be interrogated before sentence.
3320. Court to pronounce judgment.
3321. When court to hear testimony in mitigation of sentence.
3322. Suspension of sentence on notice of appeal.
3323. Recognizance required on suspension of sentence in misdemeanors.
3324. If no appeal taken, sentence to be executed
3325. Sentence to be executed on affirmance of judgment.
3326. Felon to be committed during suspension—Escape.
3327. Convict to be taken to penitentiary in ten days.
SECTION.
3328. Authority of sheriff in conveying convict.
3329. Execution of jail sentence.
3330. Commitment on non-payment of fine.
3331. Punishment in case of misdemeanor.
3332. Prisoner may be required to work out fine.
3333. Limitation upon time for executing death penalty.
3334. When execution to take place.
3335. When execution may be within jail.
3336. When sheriff to prepare place for execution
3337. Who may be present at execution.
3338. Sheriff may call on militia.
3339. Sheriff shall make return of proceedings.
3340. Inquest to be had if convict appears insane.
3341. Proceedings on the inquest.
3342. Governor to order execution when convict restored.
3343. Proceedings when female convict appears pregnant.
3344. Execution after period of pregnancy.
3345. Execution of death penalty after capture of escaped convict.
3346. Clerk to send copy of sentence to auditor.

Application of rules in civil cases—Separation of jury.

SEC. 3314. The proceedings provided by law in civil cases as to the conduct of the jury, the admonitions of the court, and the manner of returning the verdict, shall be had upon all trials of indictments, so far as the proceedings may be applicable, and when it is not otherwise provided. In the trial of capital cases, the jury shall not be permitted to separate after being sworn until discharged by the court. In other felonies and misdemeanors, the separation of the jury may be permitted in the discretion of the court, until charged, after which no separation shall be allowed until discharged. [C. L. 1876, ch. 14, § 153.]

Discharge of jury before verdict without prejudice.

SEC. 3315. In case a jury shall be discharged on account of the sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the reasons for such discharge be entered upon the journal; and such discharge shall be without prejudice to the prosecution. [C. L. 1876, ch. 14, § 154.]

Jury may be polled.

SEC. 3316. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Before the verdict is accepted, the jury may be polled at the request of either the prosecuting attorney or the defendant. [C. L. 1876, ch. 14, § 155.]

Jury to determine value of stolen property, etc.

SEC. 3317. When the indictment charges an offense against the property of another by larceny, embezzlement, or obtaining under false pretenses, the jury, on conviction, shall ascertain and declare in their verdict the value of the property stolen, embezzled or falsely obtained. [C. L. 1876, ch. 14, § 156.]

Jury may find accused guilty of lesser offense.

SEC. 3318. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, and upon an indictment for any offense, the jury may find the defendant not guilty of the offense, but guilty of an attempt to commit the same, when such an attempt is an offense. [C. L. 1876, ch. 14, § 157.]

Defendant to be interrogated before sentence.

SEC. 3319. Before the sentence is pronounced, on the conviction of felony, the defendant shall be informed by the court of the verdict of the jury, and asked whether he has anything to say why judgment should not be pronounced against him. [C. L. 1876, ch. 14, § 158.]

Court to pronounce judgment.

SEC. 3320. If the defendant has nothing to say, or after he shall have made a statement, the court shall proceed to pronounce judgment as is provided by law. [C. L. 1876, ch. 14, § 159.]

When court to hear testimony in mitigation of sentence.

SEC. 3321. Whenever any person shall be convicted, by confession or otherwise, of any offense punishable either in whole or in part, by fine, such person may move the court to hear testimony in mitigation of the sentence; and it shall be the duty of the court to hear such testimony at such time as may be suitable and proper, at the term of court at which the motion is made, or said court may continue the case to a future term, on the same terms as the case might have been continued before verdict or confession; and it shall be the duty of the prosecuting attorney to attend to such proceedings on the behalf of the territory, and to offer any testimony necessary to give the court a true understanding of the case. [C. L. 1876, ch. 14, § 160.]

Suspension of sentence on notice of appeal.

SEC. 3322. When a person shall be convicted of felony, and shall give notice to the court of his intention to apply for a writ of error, or other process by which, according to law, cases are taken to the supreme court, the court shall, on application of the person so convicted, suspend the execution of the sentence or judgment against him until the next term of the court. [C. L. 1876, ch. 14, § 161.]

For further suspension on allowance of writ of error, see §§ 3355 and 3356.

Recognizance required on suspension of sentence in misdemeanors.

SEC. 3323. No court shall suspend the execution of the sentence or judgment against any person convicted and sentenced for a misdemeanor, unless such person shall enter into recognizance, with such security as the court may require, conditioned that the person so convicted and sentenced shall appear at the next term of such court from term to term, until the case in error shall be determined, and abide the judgment or sentence of the court. [C. L. 1876, ch. 14, § 162.]

For further provisions on allowance of writ of error, see § 3357.

If no appeal taken, sentence to be executed.

SEC. 3324. If no writ of error, or other proceedings in error be allowed by the next term of the court, after the sentence was pronounced, the court shall, at such term, carry the same into execution. [C. L. 1876, ch. 14, § 163.]

Sentence to be executed on affirmance of judgment.

SEC. 3325. If a writ of error or other mode of proceeding in error provided by law, be allowed, and on the hearing the judgment of the court in which the trial was had shall be affirmed, such court shall carry into execution the sentence pronounced against the defendant at the next term, after the judgment or affirmance is rendered. [C. L. 1876, ch. 14, § 194.]

On affirmance in the supreme court an order is made for the enforcement of the original judgment, §§ 3355 and 3356.

Felon to be committed during suspension—Escape.

SEC. 3326. Whenever a person shall be convicted of a felony, and the judgment shall be suspended as aforesaid, it shall be the duty of the court to order the person so convicted into the custody of the sheriff, to be imprisoned until the case in error be disposed of. If a person so convicted shall escape, the clerk of the court, on application of the prosecuting attorney, shall issue a warrant stating such conviction and commanding the sheriff of the county to pursue after such person into any county in the territory, and said sheriff shall take such person and again commit him to the jail of such county. [C. L. 1876, ch. 14, § 165.]

Convict to be taken to penitentiary in ten days.

SEC. 3327. Every person sentenced to the penitentiary shall, within ten days after his sentence, unless the execution thereof be suspended as aforesaid, be conveyed to the penitentiary of the territory by the sheriff of the county in which the conviction took place, and shall there be delivered into custody of the warden of said penitentiary, together with a copy of the sentence of the court ordering such imprisonment, there to be safely kept until the term of his confinement shall have expired or he shall be pardoned. If the execution of the sentence be suspended, and the judgment is afterward affirmed, the defendant shall be conveyed to the penitentiary within ten days after the court shall direct the sentence to be executed. [C. L. 1876, ch. 14, § 166. S. L. 1882, ch. 76, § 9.]

Authority of sheriff in conveying convict.

SEC. 3328. The sheriffs of the several counties of this territory, during the time they shall be employed in conveying to the penitentiary any person sentenced to imprisonment therein, shall have the same power and authority to secure him in any jail within the territory, and to demand the assistance of any sheriff, jailor or other person within this territory, in keeping such prisoner, as if the sheriff were in his own proper county; and all such sheriffs, jailors or other persons so called upon shall be liable, on refusal, to the same penalties as if the sheriff making the demand were in his own county. [C. L. 1876, ch. 14, § 167.]

Execution of jail sentence.

SEC. 3329. When any person convicted of an offense shall be sentenced to imprisoned in the county jail, the court shall order the defendant into the custody of the sheriff, who shall deliver him, together with the record of conviction, to the jailor, in whose custody he shall remain in the jail of the proper county, until the term of his confinement shall have expired, or he shall have been pardoned, or otherwise legally discharged. [C. L. 1876, ch. 14, § 168.]

Commitment on non-payment of fine.

SEC. 3330. Whenever a fine shall be the whole or part of a sentence, the court may, in its discretion, order that the person sentenced shall remain confined in the county jail until the amount of such fine and costs are paid. [C. L. 1876, ch. 14, § 169.]

Punishment in case of misdemeanor.

SEC. 3331. In all cases of misdemeanors tried before justices of the peace, or the district courts of this territory, by indictment, in which the defendant may be convicted, the punishment shall be within the discretion of the court, limited as penalties are now by law, except that payment of the costs of prosecution may be added to and made a part of the sentence, and the court may in its discretion direct the defendant to stand committed until the sentence, including the costs, shall be complied with. [C. L. 1876, ch. 15, § 1.]

Prisoner may be required to work out fine.

SEC. 3332. In the event of a defendant being sentenced to pay a fine and costs, or to imprisonment and costs, the court may direct that in case of non-payment of said fine and costs, that the defendant be put to work, either within or without the prison, until said fine and costs shall be paid. [C. L. 1876, ch. 15, § 2.]

Limitation upon time for executing death penalty.

SEC. 3333. In no case, where capital punishment is to be inflicted, shall the sentence be executed within less than thirty days from the date of the sentence. [C L. 1876, ch. 14, § 206.]

Where execution to take place.

SEC. 3334. When any person shall be sentenced to be hung, such punishment shall be inflicted in the immediate vicinity of the jail, within an inclosure to be prepared for that purpose under the direction of the sheriff, which inclosure shall be higher than the gallows, and so constructed as to exclude the view of persons outside thereof. [C. L. 1876, ch. 14, § 170.]

When execution may be within jail.

SEC. 3335. In all cases in which the jail in any county shall be of such construction that the sentence of death can be conveniently carried into execution within its walls, no inclosure need be prepared, as is provided in the preceding section, but such execution shall take place within the walls of the jail. [C. L. 1876, ch. 14, § 171.]

When sheriff to prepare place for execution.

SEC. 3336. Whenever the sentence of death shall be about to be carried into execution in any county of this territory which at the time has no jail, it shall be the duty of the sheriff to cause such execution to be conducted at such convenient place at the county seat as he may select. [C. L. 1876, ch. 14, § 172.]

Who may be present at execution.

SEC. 3337. Besides the sheriff and his assistants, the following persons may be present at the execution, and none others: The clergyman in attendance upon the prisoner, such other persons as the prisoner may designate, not exceeding six in number, and such other persons as the sheriff may designate, not exceeding twelve in number. [C. L. 1876, ch. 14, § 173.]

Sheriff may call on militia.

SEC. 3338. Whenever the sheriff shall deem the presence of a military force necessary to carry into effect the provisions of the four preceding sections, he shall make a written requisition upon the officer of the militia highest in command then in his county, who shall issue the necessary orders to insure a compliance with the requisition of such sheriff. [C. L. 1876, ch. 14, § 174.]

Sheriff shall make return of proceedings.

SEC. 3339. Whenever the sheriff shall inflict the punishment of death, upon a convict, in obedience to the command of the court, he shall make return of his proceedings as soon as may be, to the clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence by recording the same. [C. L. 1876, ch. 14, § 175.]

Inquest to be had if convict appears insane.

SEC. 3340. If any convict sentenced to the punishment of death, shall appear to be insane, the sheriff shall forthwith give notice thereof to a judge of the district court of the judicial district, and shall summon a jury of twelve impartial men to inquire into such insanity, at a time and place to be fixed by the judge, and shall give immediate notice thereof to the prosecuting attorney. [C. L. 1876, ch. 14, § 176.]

Proceedings on the inquest.

SEC. 3341. The judge, clerk of the court, and prosecuting attorney, shall attend the inquiry. Witnesses may be produced and examined before the jury. The finding shall be in writing, signed by the jury. If it be found that the convict is insane, the judge shall suspend the execution of the convict until the sheriff shall receive a warrant from the governor of the territory, directing such execution. The finding of the jury, and the order of the judge, certified by the judge, shall be by the clerk entered on the journal of the court. [C. L. 1876, ch. 14, § 177.]

Governor to order execution when convict restored.

SEC. 3342. The sheriff shall transmit immediately, a certified copy of such finding to the governor, who may, as soon as he shall be convinced that the convict has become of sound mind, issue a warrant appointing a time for his execution. [C. L. 1876, ch. 14, § 178.]

Proceedings when female convict appears pregnant.

SEC. 3343. If a female convict, sentenced to the punishment of death appear to be pregnant, the sheriff shall in like manner summon a jury of six persons, who, on like proceedings being had as in the case of an insane convict, shall return a finding signed by them. [C. L. 1876, ch. 14, § 179.]

Execution after period of pregnancy.

SEC. 3344. If, by such finding, it shall appear that such female convict is with child, the sheriff shall in like manner suspend the execution of her sentence, and shall transmit the finding to the governor, who, on being satisfied that such woman is no longer pregnant, shall issue a warrant appointing a day for her execution. [C. L. 1876, ch. 14, § 180.]

Execution of death penalty after capture of escaped convict.

SEC. 3345. If any person who has been convicted of murder in the first degree, and sentenced to be hung, shall escape and shall not be retaken before the time fixed for his execution, it shall be lawful for the sheriff to re-arrest such person, and commit him to the jail of the proper county, and make return thereto to the court in which the sentence was passed, and thereupon the court shall proceed to fix the time of execution, which shall be carried into effect by the proper officer, as may be provided by law for the execution of persons convicted of murder in the first degree. [C. L. 1876, ch. 14, § 210.]

Clerk to send copy of sentence to auditor.

SEC. 3346. In convictions of felony, the clerk of the court in which such conviction is obtained, is hereby required to forward to the auditor of this territory, a copy of the sentence of the court in each case. [C. L. 1876, ch. 101, § 1.]

CHAPTER 13.

NEW TRIALS.

SECTION.
3347. Causes for granting new trial.
3348. Application, when made.

SECTION.
3349. When application to be supported by affidavits.

Causes for granting new trial.

SEC. 3347. A new trial, after a verdict of conviction, may be granted on the application of the defendant, for any of the following reasons affecting materially his substantial rights:

First—Irregularity in the proceedings of the court, jury, or the prosecuting attorney or the witnesses for the territory, or any order of the court or abuse of discretion, by which the defendant was prevented from having a fair trial;

Second—Misconduct of the jury, or the prosecuting attorney, or of the witnesses for the territory;

Third—Accident or surprise which ordinary prudence could not have guarded against;

Fourth—That the verdict is not sustained by sufficient evidence, or is contrary to law;

Fifth—Newly discovered evidence material for the defendant, which he could not with reasonable diligence have discovered and produced at the trial;

Sixth—Error of law occurring at the trial. [C. L. 1876, ch. 14, § 181.]

Application—When made.

SEC. 3348. The application for a new trial shall be by motion upon written grounds, filed at the term the verdict is rendered, and shall, except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, be within ten days after the verdict was rendered, unless unavoidably prevented. [C. L. 1876, ch. 14, § 182.]

When application to be supported by affidavits.

SEC. 3349. The causes enumerated in sub-division two, in the section next preceding the last, must be sustained by affidavits, showing their truth, and may be controverted by affidavits. [C. L. 1876, ch. 14, § 183.]

CHAPTER 14.

MOTIONS IN ARREST.

SECTION.
3350. Causes for arrest of judgment.
3351. Defect of form not cause for arrest.

SECTION.
3352. Effect of arresting judgment.
3353. Time for making motion.

Causes for arrest of judgment.

SEC. 3350. A motion in arrest of judgment may be granted by the court for either of the following causes:

First—That the grand jury which found the indictment had no legal authority to inquire into the offense charged, by reason of its not being within the jurisdiction of the court;

Second—That the facts stated in the indictment do not constitute an offense. [C. L. 1876, ch. 14, § 184.]

Defect of form not cause for arrest.

SEC. 3351. No judgment can be arrested for a defect of form. [C. L. 1876, ch. 14, § 185.]

Effect of arresting judgment.

SEC. 3352. The effect of allowing a motion in arrest of judgment shall be to place the defendant in the same position with respect to the prosecution as before the indictment was found. If from the evidence on the trial there shall be sufficient reason to believe him to be guilty of an offense, the court shall order him to enter into a recognizance, with sufficient security, conditioned for his appearance at the first day of the next term of the same court, otherwise the defendant shall be discharged. [C. L. 1876, ch. 14, § 186.]

Time for making motion.

SEC. 3353. Motions in arrest of judgment must be made within three days after the verdict is rendered. [C. L. 1876, ch. 14, § 187.]

CHAPTER 15.

PROCEEDINGS IN ERROR.

SECTION.
3354. Writ of error allowed on verified petition, etc.—Time.
3355. Proceedings on allowance of writ in capital cases.
3356. Proceedings on allowance of writ in other cases.
3357. Misdemeanor—Suspension of sentence—Recognizance.
SECTION.
3358. Proceedings on reversal when defendant in penitentiary.
3359. When defendant discharged.
3360. Defendant returned to jail if new trial ordered.

Writ of error allowed on verified petition, etc.—Time.

SEC. 3354. In all criminal cases, after final judgment, and within one year after the rendition of the judgment, writs of error may, on good cause shown, be allowed on the application of the defendant upon his petition, verified by affidavit, setting forth the grounds of error clearly and succinctly, of which he complains, together with a transcript of the record of the trial court, by the supreme court, or any judge thereof, in the recess or vacation of said court. [S. L. 1884, ch. 37, § 1.]

For suspension of sentence by trial judge, see §§ 3322–3325.

Proceedings on allowance of writ in capital cases.

SEC. 3355. In all cases of conviction, where the punishment shall be capital, the court or judge allowing such writ shall order a suspension of the execution until such writ of error shall be heard and determined; upon hearing such writ of error, the supreme court shall order the prisoner to be discharged, a new trial to be had, or appoint a certain day for the execution of the sentence, as the nature of the case may require. [S. L. 1884, ch. 37, § 2.]

Proceedings on allowance of writ in other cases.

SEC. 3356. In all other cases of conviction of felony or misdemeanor, the supreme court or judge allowing the writ of error, may order the same to be made returnable before the supreme court, and in cases of felonies shall order the suspension of the execution of said sentence until such case shall be heard and determined; and upon hearing such writs of error, either in felonies or misdemeanors, the supreme court shall order the prisoner to be discharged, a new trial to be had, or if the judgment against the defendant be affirmed, the supreme court shall order the original judgment to be enforced. [S. L. 1884, ch. 37, § 3.]

Original judgment shall be enforced at next term of district court, § 3325.

Misdemeanor—Suspension of sentence—Recognizance.

SEC. 3357. In cases of conviction for misdemeanors the court or judge allowing the writ of error, shall make it returnable as in cases of conviction for felony, and may order a suspension of the execution of the sentence upon the defendant on his entering into a recognizance before the clerk of the court in which the case was tried, with sufficient security, to be approved by the clerk, in such sum as shall be specified in the order of the court, or the judge allowing such writ of error, which recognizance shall be conditioned for the defendant's prosecuting said writ of error to effect, and surrendering himself to the custody of the sheriff of the county in which such conviction was had, in case the judgment of the court shall not be reversed or a new trial ordered. [S. L. 1884, ch. 37, § 4.]

Procedings on reversal when defendant in penitentiary.

SEC. 3358. When any defendant has been committed to the penitentiary of this territory, and the judgment by virtue of which the commitment is made shall be reversed on a writ of error allowed under the provisions of this chapter by which reversal the defendant shall be entitled to his discharge or to a new trial, the clerk of the court reversing said judgment shall under the seal of the court, forthwith certify the same to the warden of the penitentiary. [C. L. 1876, ch. 14, § 192.]

When defendant discharged.

SEC. 3359. Said warden, on receipt of such certificate, in case a discharge of such defendant be ordered, shall immediately discharge such defendant from the penitentiary. [C. L. 1876, ch. 14, § 193.]

Defendant returned to jail if new trial ordered.

SEC. 3360. In case a new trial be ordered, the warden of the penitentiary shall forthwith cause said defendant to be taken and conducted to the county jail of the county in which said defendant was convicted, and committed to the custody of the sheriff thereof. [C. L. 1876, ch. 14, § 194.]

CHAPTER 16.

FUGITIVES FROM JUSTICE.

SECTION.
3361. Arrest of fugitives from other states.
3362. Examination and commitment of fugitive

SECTION.
3363. Notice of detention.

Arrest of fugitives from other states.

SEC. 3361. When an affidavit shall be filed before any judge of a district court, police court, or any justice of the peace within this territory, setting forth that any person charged with the commission of any criminal offense against the laws of any other state or of the territories of the United States, and which, if the act had been committed in this territory, would, by the laws thereof, have been a crime, is, at the time of filing such affidavit, within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ, the person so charged. [C. L. 1876, ch. 14, § 199.]

Examination and commitment of fugitive.

SEC. 3362. When the person arrested, as provided in the preceding section, shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person to be removed to the proper place of prosecution. [C. L. 1876, ch. 14, § 200.]

Notice of detention.

SEC. 3363. Whenever any person is committed to jail by any judge or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace, forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offense shall have been committed, or to the person injured by such offense, and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after they shall have received such notice, to apply for and obtain the proper requisition for the persons so committed. [C. L. 1876, ch. 14, § 201.]

CHAPTER 17.

REPRIEVES AND PARDONS.

SECTION.
3364. Conditional reprieve and acceptance thereof.
3365. Confinement of reprieved person.
3366. Proceedings when condition of reprieve violated.
3367. Application for pardon.
SECTION.
3368. Notice of application for pardon.
3369. Prosecuting attorney to make statement to governor.
3370. Application and notice not necessary in certain cases.

Conditional reprieve and acceptance thereof.

SEC. 3364. Whenever the governor may deem it expedient and proper to reprieve any person under sentence of death, under any condition whatsoever, the condition upon which such reprieve is granted shall be specified in the warrant, and the person accepting such conditional reprieve shall subscribe such acceptance upon the warrant containing the conditions of reprieve in the presence of two witnesses, who shall attest the same, and such witnesses shall go before the clerk of the court where such sentence is recorded, and shall prove the same, and the clerk shall thereupon record the warrant of reprieve, together with the acceptance and proof thereof, in the journals of the court, a transcript of which record shall, at all times thereafter, be evidence for or against the person accepting such conditional reprieve. [C. L. 1876, ch. 14, § 202.]

Confinement of reprieved person.

SEC. 3365. If, in case of any reprieve, the governor shall deem it expedient and proper to confine the person so reprieved in the penitentiary, it being so specified in the warrant, the sheriff or other officer having the person so reprieved in his custody, shall convey him to the penitentiary in the same manner as other convicts are directed by law to be conveyed, and the warden of the penitentiary shall receive such person, together with the warrant of reprieve, and shall proceed with such convict as such warrant may direct; and the expenses of transporting such person to the penitentiary shall be allowed and paid as in other cases. [C. L. 1876, ch. 14, § 203.]

Proceedings when condition of reprieve violated.

SEC. 3366. If any person reprieved shall violate the conditions upon which such reprieve is granted, such person shall be proceeded against as in other cases of persons escaping from prison, convicted of offenses. [C. L. 1876, ch. 14, § 204.]

Application for pardon.

SEC. 3367. Application for the pardon of any person convicted of an offense, and sentenced to punishment, shall be made in the manner and under the restrictions hereinafter prescribed. [C. L. 1876, ch. 14, § 205.]

Notice of application for pardon.

SEC. 3368. Notice for the application for such pardon shall be given to the prosecuting attorney of the county in which the indictment was found against such person or persons so convicted and sentenced, at least three weeks before such application shall be considered by the governor of the territory, a copy of which notice, acknowledged by such prosecuting attorney or certified under oath of a credible witness, to be a true copy thereof, shall accompany every such application to the governor, and a notice of such application, setting forth the names of the person or persons on whose behalf it is made, the crime of which he, she or they shall have been convicted, the time of such conviction and the term of sentence, shall also be published in some newspaper printed in such county and of general circulation therein, or if there be no newspaper published therein, then such notice shall be posted on the door of the court house of such county, at least three weeks before the governor of the territory shall consider any such application, a copy of which notice duly authenticated by some credible witness under oath, shall also accompany such application, and in every case, where capital punishment is to be inflicted, such notice shall only be required to be so served and published for ten days before the consideration of such application. [C. L. 1876, ch. 14, § 206.]

Prosecuting attorney to make statement to governor.

SEC. 3369. It is hereby made the duty of the prosecuting attorney of the county in which the indictment was found against such person or persons, on whose behalf such application for pardon is made, to make out and forward to the governor within ten days after the service of the notice upon him as heretofore provided, a statement setting forth the time of such trial and conviction, and the date and term of such sentence, and also the crime of which such person or persons were convicted, and he shall also briefly state any circumstances in aggravation or extenuation, if any such appear in the testimony upon the trial of the person or persons in whose behalf the application is made. [C. L. 1876, ch. 14, § 207.]

Application and notice not necessary in certain cases.

SEC. 3370. In every case in which there is imminent danger of death of any person imprisoned in the penitentiary, which fact shall appear by the certificate of the physician thereof, addressed to the governor, which certificate may be accompanied by the recommendation of the warden of the penitentiary, for the pardon of such convict or convicts; and in every case in which the warden of the penitentiary and directors thereof shall unite in a recommendation to the governor for the pardon of any such convict or convicts, stating specifically the considerations and reasons why such application is made, the provisions in the foregoing sections shall not be considered applicable. [C. L. 1876, ch. 14, § 208.]

CHAPTER 18.

PROVISIONS RELATING TO CONVICT LABOR.

SECTION.
3371. Prisoner in jail may be put to work.
3372. Superintendence of prisoners while at work.
3373. Hiring of convict labor prohibited.
SECTION.
3374. Employment of jail prisoners, when permitted.
3375. Employment of prisoners in penitentiary, when permitted.

Prisoner in jail may be put to work.

SEC. 3371. Any persons confined in any county jail in this territory may be compelled to work, in any way that the county commissioners may direct, for the benefit of the county. [S. L. 1879, ch. 59, § 1.]

Superintendence of prisoners while at work.

SEC. 3372. It shall be the duty of the sheriff of each and every county, under the direction of the chairman of the board of county commissioners, and he may do so of his own will when he deems it necessary, by himself or deputy, to employ each and every prisoner under his charge and under sentence, who is able to work, to do such work as the chairman of the board shall direct, and to keep such prisoner at such work during the working hours of every week day, unless said sheriff and his deputy shall be necessarily engaged in other employment in the service of the county, in which case, if there are more than three prisoners to be employed, it shall be lawful for such chairman to employ a competent guard to superintend and watch such prisoners, at a charge not exceeding two dollars per day, to be paid out of the county treasury upon a warrant duly drawn by order of the board of county commissioners. But nothing in this and the last preceding section contained shall be construed as allowing any extra compensation, fee, or reward to such sheriff or his deputy for such services as are required of him by said section. [S. L. 1879, ch. 59, § 2.]

Hiring of convict labor prohibited.

Sec. 3373. The person or persons in charge of any penitentiary or reformatory, jail or other prison in the Territory of Wyoming, wherein territorial convicts are confined, shall not, nor shall any authority whatsoever, make any contract for the employment of any territorial convict in any of the prisons, penitentiaries or reformatories in this territory, either by the letting of the labor of such convicts at a fixed price per diem, or by what is known as the "piece-price plan," or in any other manner, whereby the labor of such convicts is let to or controlled by any outside person or persons; and such convicts shall not be employed by any authority whatever upon any public work or contract outside of the prison, penitentiary, or reformatory in which such convicts may be confined. [S. L. 1886, ch. 51, § 1.]

Employment of jail prisoners, when permitted.

Sec. 3374. No person or persons confined in any county jail, or in any jail or prison of any city, town, village or municipality, charged with any offense and awaiting the action of the grand jury, or any person who is charged with any offense and is awaiting trial therefor, shall be employed or put to work upon any public work or improvement, or upon the highways, streets, alleys, parks or public places of any such county, city, town, village or municipality; *Provided*, That all persons convicted by court of competent jurisdiction, and sentenced to confinement at hard labor in any jail or prison of any county, city, town, village or municipality, may be employed or put to work upon any public work of improvement, or upon the highways, streets, alleys, parks or public places of any such county, city, town, village or municipality in the territory. [S. L. 1886, ch. 51, § 2.]

Employment of prisoners in penitentiary, when permitted.

Sec. 3375. Nothing in the two preceding sections contained shall be construed to prohibit the territory from employing its convicts confined in a prison, penitentiary or reformatory, within the territory, upon any work within said prison, penitentiary or reformatory, upon its own account; *Provided*, That such employment, if any, shall be so conducted as to offer no competition to free labor, and such employment on territorial account shall not be enforced or required any further than shall be necessary for the proper physical and moral well-being of such convicts. [S. L. 1886, ch. 51, § 3.]

TITLE 40. PROCEDURE—MISCELLANEOUS.

CHAPTER 1. JURIES.
CHAPTER 2. CONTINUANCES.
CHAPTER 3. CHANGE OF VENUE.
CHAPTER 4. INTERPRETERS.
CHAPTER 5. OATHS.
CHAPTER 6. TIME, LEGAL STANDARD OF.

CHAPTER 1.

JURIES.

SECTION.
3376. Who are competent jurors.
3377. When juror may be excused.
3378. Assessors shall ascertain jury qualifications of taxpayers.
3379. Selection of two hundred persons for jury duty.
3380. Restrictions upon selection by commissioners.
3381. Certified lists of jurors.
3382. Clerk to deposit names in "jury box."
3383. Clerk to draw names of jurors.
3384. Notice of drawing jurors.
3385. Witnesses to drawing jurors.
SECTION.
3386. Adjournment of drawing.
3387. Drawing to proceed if witnesses attend.
3388. How drawing of names conducted.
3389. Order for summoning jurors.
3390. Manner of summoning jurors.
3391. Attendance of juror required.
3392. Return of officer.
3393. Contempt of court by jurors and officers.
3394. Sheriff corruptly summoning juror—Penalty.
3495. Manner of completing panel.
3396. Manner of forming jury for trial.

Who are competent jurors.

SEC. 3376. All male citizens residing in any of the counties of this territory, and being able to read and write the English language, and having the qualifications of electors and being of sound mind and discretion, and not being judges or clerks of any of the courts of this territory, sheriffs, coroners or jailors, or subject to any bodily infirmity disqualifiying them from service as jurors and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, are and shall be competent persons to serve on all grand and petit juries within their respective counties; *Provided*, That persons over sixty-five years of age, ministers of the gospel, county officers, licensed attorneys, practicing physicians, surgeons and dentists, officers and employes of the government of the United States, shall not be compelled to serve as jurors. [S. L. 1886, ch. 114, § 1.]

For exemptions of firemen from jury duty, see §§ 1227—1232.

When juror may be excused.

SEC. 3377. Any person may also be excused from serving on a jury when it shall appear to the court that the interests of such juror, or those of the public, will be materially injured by his attendance, or when the state of his own health, or that of any member of his family requires his absence. [S. L. 1886, ch. 114, § 5.]

Assessor shall ascertain jury qualifications of tax-payers.

SEC. 3378. It shall be the duty of the county assessor of each county in this territory, and his deputies, at the time of making the annual assessment in each year, to ascertain from each person assessed, either for a property or poll tax, and from all other private persons within his county, whom he believes possess the qualifications of jurors as required by law, whenever such person can be found in his county, all information as to each of such persons, necessary to determine whether such person or persons is or are qualified persons to serve as jurors within the county; and for that purpose shall be and is hereby authorized and required to administer to all such male persons, all such oaths or affirmations as may be necessary to elicit such information. Such assessors or deputies shall ascertain as to all such persons, his age, the precinct in which he resides, his length of residence in the territory, and in the county, and in such precinct; also the state or nation in which such person was born; whether such person is a full naturalized citizen of the United States, or has only declared his intention to become a citizen of the United States, and the occupation of such person, and whether such person can read and write the English language. It shall be the duty of such assessors and their deputies, upon obtaining such information, upon oath or affirmation as aforesaid, to enter upon the assessment roll, opposite the name of each male person thereon, under appropriate headings, the information thus obtained; and it shall be the duty of the county commissioners of each county to furnish to the assessors assessment books, so prepared and ruled as to enable the assessors and their deputies to enter such information therein. It shall be the duty of each assessor or deputy assessor to administer to all male persons found in the county and subject to assessment for taxation therein, the following oath: "You do solemnly swear (or affirm) that you will well and truly answer all such questions as shall be propounded to you by me touching your qualifications for jury service." And it shall be the duty of every person to whom such oath is tendered to take the same. If any assessor or deputy assessor shall fail, neglect or refuse, without good cause, to tender such oath to any male person found in his county, or if any male person having such oath tendered to him by any assessor or deputy assessor shall refuse to take the same, then, in either case, the person so offending shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If any person having taken such oath shall knowingly and wilfully make any false answer to any question propounded to him by such assessor or deputy the person so offending shall be deemed guilty of perjury, and shall, on conviction thereof, be punished by imprisonment in the penitentiary for a term not less than one year nor more than ten years. [S. L. 1886, ch. 114, § 6.]

Selection of two hundred persons for jury duty.

Sec. 3379. In each of the counties of this territory wherein a district court is appointed or directed to be holden, the board of county commissioners of the county or a majority of them, shall meet at the office of the county clerk of the county at least thirty days before the next term or session of such district court, and select two hundred persons possessing the qualifications of jurors, as prescribed in the first section of this chapter, from the body of the county. [S. L. 1886, ch. 114, § 7.]

Restrictions upon selection by commissioners.

Sec. 3380. In making such selections the board of county commissioners shall not select any of the same persons who served as jurors at the preceding term of the district court, upon either the regular panel of the grand or petit juries; nor shall they select any person who from the assessment books of the county appears to be disqualified to serve as a juror for any reason; nor shall they select any persons otherwise known to them not to be qualified to serve as jurors. And if any such disqualified persons shall be selected, drawn and returned to serve as either grand or petit jurors, it shall be the duty of the judge of the district court to strike the names of all such persons from the list of jurors and direct the clerk of said court in open court to draw from the jury box, as hereinafter provided, the names of other persons therein to fill up the said lists of jurors. For the purpose of making such selections the respective boards of county commissioners shall refer to the assessment books of their counties, and be governed thereby in so far as such assessment books show any person to be disqualified to serve as a juror. [S. L. 1886, ch. 114, § 8.]

Certified lists of jurors.

SEC. 3381. Certified lists of the persons so selected to serve as jurors shall be placed in possession of the county clerk. [S. L. 1886, ch. 114, § 9.]

Clerk to deposit names in "jury box."

SEC. 3382. On receiving such lists the county clerk shall file the same in his office and shall write down the names contained therein, on separate pieces of paper, so as to conceal the names, of the same size and appearance as nearly as may be, and shall fold up each of such pieces of paper and deposit them in a box to be kept by him for that purpose, to be labelled "jury box." [S. L. 1886, ch. 114, § 10.]

Clerk to draw names of jurors.

SEC. 3383. A grand and petit jury shall be drawn and required to attend at every regular term, and when ordered by the judge thereof, at any special term of each district court in this territory; and, at least fifteen days before any term of the district court, the county clerk of the county where such court is to be held shall draw from the jury box the names of sixteen persons to serve as grand jurors, and the names of twenty-four persons to serve as petit jurors. [S. L. 1886, ch. 114, § 11.]

Notice of drawing jurors.

SEC. 3384. At least five days before the drawing of such jurors the county clerk shall give notice to the sheriff and two justices of the peace in said county of the day and hour when such drawing will take place. [S. L. 1886, ch. 114, § 12.]

Witnesses to drawing jurors.

SEC. 3385. At the time so appointed it shall be the duty of the sheriff of the county, in person or by his under sheriff and the justices aforesaid, to attend at the county clerk's office of the county, to witness such drawing, and if any two of such officers shall attend at the time and place appointed, the clerk shall proceed in their presence to draw the jurors. [S. L. 1886, ch. 114, § 13.]

Adjournment of drawing.

SEC. 3386. If two of the officers so notified do not appear, the county clerk shall adjourn the drawing of such jurors until the next day, and shall by written notice require any justice of the county to attend such drawing on the adjourned day. [S. L. 1886, ch. 114, § 14.]

Drawing to proceed if witnesses attend.

SEC. 3387. If at the adjourned day any two of the officers notified to attend the drawing of such jurors shall appear, but not otherwise, the county clerk shall proceed, in the presence of the officers so appearing, to draw jurors. [S. L. 1886, ch. 114, § 15.]

How drawing of names conducted.

SEC. 3388. The county clerk shall conduct such drawing as follows:

First—He shall shake the box containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names were written as much as possible;

Second—He shall then publicly draw out of the box as many of said slips of paper containing such names, as shall be required by law, or specially ordered by such court;

Third—A minute of the drawing shall be kept by one of the attending officers, in which shall be entered the names contained on every slip of paper so drawn, before any other slip of such kind shall be drawn;

Fourth—If after the drawing of the whole number required for grand and petit jurors, the name of any person shall appear to have been drawn who is dead, or become insane, or has permanently removed from the county, to the knowledge of the clerk or any other attending officer, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing such name shall be destroyed;

Fifth—Another name shall be drawn in place of that contained on the slip of paper so destroyed, which shall in like manner be entered in the minute of the drawing;

Sixth—The same proceedings shall be had as often as may be necessary until the whole number of jurors required shall have been drawn;

Seventh—The minute of the drawing shall then be signed by the clerk and the attending officers, and filed in the clerk's office;

Eighth—Separate lists of the names of persons so drawn for grand jurors and petit jurors, with their places of residence, and specifying for what court they were drawn, shall be made and certified by the clerk and the attending officers, to the clerk of court for which they were drawn. The first sixteen names upon the list of names as finally drawn and completed, shall be summoned as grand jurors, and the remainder of such list shall be summoned as petit jurors;

Ninth—The box containing the residue of the names selected as aforesaid, shall, after such drawing, be locked up by the county clerk, in the presence of the said attending officers, and the key thereof deposited with the clerk of the court, or his deputy, and by him safely kept; and the said jury box shall be retained by the county clerk until the same be ordered by the district court to be used as hereinbefore provided. [S. L. 1886, ch. 114, § 16.]

Order for summoning jurors.

SEC. 3389. The clerk of the court shall within one day after receiving the list so drawn, issue an order to the sheriff, deputy sheriff or coroner, as the case may be, commanding him to summon the persons whose names are drawn to appear before the district court at or before the hour of eleven o'clock, on the morning of the first day of the term, stating in the order the day of the week and month, and the place of the sitting of the court, to serve as grand jurors, and a like order commanding the sheriff, deputy sheriff or coroner to summon the petit jurors. [S. L. 1886, ch. 114, § 17.]

Manner of summoning jurors.

SEC. 3390. The sheriff, deputy sheriff or coroner having received the order shall at least five days before the first day of the session of the court, serve upon each person whose name was selected and drawn as grand juror, a true copy of the command, except that the copy shall contain only the name of the grand juror served, and not the name of any other grand juror, and the sheriff, deputy sheriff or coroner shall at least five days before the first day of the session of the court, in like manner summon each person whose name was selected and drawn as petit juror, and such service shall be made by reading or delivering the copy to the person to be summoned, or by leaving the copy at his residence. [S. L. 1886, ch. 114, § 18.]

Attendance of juror required.

SEC. 3391. Each grand juror and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of court. [S. L. 1886, ch. 114, § 19.]

Return of officer.

SEC. 3392. The sheriff, deputy sheriff or coroner, having received the order of service issued by the clerk, shall make return thereof with his proceedings to the clerk, before the session of the court. [S. L. 1886, ch 114, § 20.]

Contempt of court by jurors and officers.

SEC. 3393. If any person summoned to appear as grand juror or petit juror, fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five dollars nor more than fifty dollars, and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court, not longer than ten days in the county jail; and if the county commissioners in any county neglect and fail to select and furnish to the court the names of persons as hereinbefore provided, such person so offending may be fined by the court not less than five dollars nor more than fifty dollars, and if any clerk of the district court, or deputy clerk or sheriff, deputy sheriff or coroner, neglect or fail to perform the duties imposed by this chapter, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five dollars nor more than fifty dollars, and if guilty of gross misconduct in office, and contempt, may be imprisoned by the court not longer than thirty days in the county jail. [S. L. 1886, ch. 14, § 21.]

Sheriff corruptly summoning juror—Penalty.

SEC. 3394. If a sheriff or other officer corruptly or through favor or ill-will summon a juror with the intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from like motive, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever disqualified from holding any office in this territory. [S. L. 1886, ch. 114, § 22.]

Manner of completing panels.

SEC. 3395. When, for any cause, there is no panel of grand or petit jurors, or such panels or either of them are for any reason incomplete, the court shall cause to be drawn from the jury box in open court, the number of names necessary to constitute or complete the panel of jurors required; but in case the names in such jury box be exhausted before such panel or panels is or are formed or completed, or if for any cause there are no names in such jury box, then and in either of such cases the court may order the county clerk, or his deputy together with the probate judge or a justice of the peace to furnish the clerk of the court with such number of names as may be fixed by the order of persons, possessing the qualifications of jurors, who shall immediately write the names of such persons upon separate and uniform slips of paper, and put the same in the jury box, and after well mixing the same he shall in open court draw by chance therefrom the requisite number of names to serve as jurors. In making such selection of names the officers making such selections shall examine the assessment books of the county and not select any names who from such books appear to be or are otherwise known to be disqualified. In case any person drawn pursuant to this section resides at such a great distance from the place where the court is held, that the court deems it impracticable or inconsistent with the public interest to summon such person so drawn, the court may so find, and its finding shall be conclusive, and direct that such person or persons be not summoned and order others to be drawn instead thereof; and the clerk of the court shall issue a venire for the summoning of the persons so drawn, under the order of the court, which venire shall be directed to the sheriff and executed and returned as in other cases and under like penalties. [S. L. 1886, ch. 114, § 23.]

Manner of forming jury for trial.

SEC. 3396. When any case is called for trial and a jury is required to try the same, the clerk shall prepare separate and uniform slips of paper having written thereon the names of the persons composing the panel of the petit jury, and deposit them in a box to be called the "petit jury box." He shall then draw from the petit jury box the names of persons to form the jury until the same is formed. If the names in such box become exhausted before such jury is completed, then he shall draw from the regular jury box a name or names to complete the jury until the same is completed, and the persons whose names are so drawn from the regular jury box shall be summoned forthwith to complete the jury in the case called for trial, under the direction of the court; *Provided*, That the court may direct that any person whose name is so drawn from the regular jury box be not summoned for the same reason as in the preceding section; *And, provided further*, That when any such jury for the trial of a particular case is completed, the names of all persons drawn from the regular jury box to complete such jury shall be returned to such regular jury box; *And, provided further*, That in forming a jury for the trial of a particular case all persons then engaged as jurors upon any case shall, as their names are called, be excused. All members of the panel of the petit jury who are not actually engaged in the trial of a case shall be excluded from the court room during the trial of such case, by the court. The court may also at any time on the request of either party to a case on trial before a jury, order the jury taken out of the hearing of any argument or discussion upon a question of law. [S. L. 1886, ch. 114, § 24.]

CHAPTER 2.

CONTINUANCES.

SECTION.
3397. Continuance of action because of absent evidence.
3398. Court may grant continuance for other cause.
3399. Application of this chapter.

Continuance of action because of absent evidence.

SEC. 3397. A motion to postpone the trial of a case, in any of the courts of this territory, on account of the absence of evidence, can be made only upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it, and where the evidence may be; and, if it is for an absent witness, the affidavit must show where the witness resides, if his residence is known to affiant, and the probabilities of procuring his testimony within a reasonable time, and that his absence has not been procured by the act or connivance of the party, nor by others at his request, nor with his knowledge or consent, and what facts he believes the witness will prove, and that he believes them to be true, and that he is unable to prove such facts by any other witness whose testimony can be as readily procured. If, thereupon, the adverse party will consent that, on the trial, the facts stated in the affidavit shall be taken as true, if the absent evidence is written or documentary, and in case of a witness that he will testify to the facts stated in the affidavit as true, the trial shall not be postponed for that cause; and, in such case, the party against whom such evidence is used shall have the right to impeach the evidence of such absent witness, as in case where the witness is present, or his deposition is used. [C. L. 1876, ch. 17, § 1.]

Court may grant continuance for other cause.

SEC. 3398. Any court, for good cause shown, other than the absence of evidence, may continue any action at any stage of the proceedings, at the cost of the applicant, to be paid as the court shall direct. [C. L. 1876, ch. 17, § 2.]

Application of this chapter.

SEC. 3399. The provisions of this chapter shall apply as well to criminal as civil cases. [C. L. 1876, ch. 17, § 3.]

CHAPTER 3.

CHANGE OF VENUE.

SECTION.
3400. Causes for changes in civil action—Affidavit.
3401. Proceedings when change granted—Undertaking.
3402. Change in vacation—Notice to adverse party.
3403. Where criminal cases tried.
3404. Application for change in criminal case and proceedings thereon.
SECTION.
3405. When another judge called.
3406. To what county change granted—Duty of officers.
3407. When jurisdiction complete after change.
3408. But one change granted.
3409. When application to be made.

Causes for changes in civil action—Affidavit.

SEC. 3400. Whenever either party to a civil action in any district court of the territory shall file an affidavit in the case, stating one or more of the following causes:

First—That the judge has been engaged as counsel in the case prior to his election or appointment as judge, or is otherwise interested in the case; or,

Second—That the judge is of kin to either party; or,

Third—That the person making the affidavit believes that on account of the bias, or prejudice, or interest of the presiding judge he cannot obtain a fair trial; or,

Fourth—That the opposite party has an undue influence over the citizens of the county, or that an odium attaches to the applicant or to his cause or defense, or on account of local prejudice; or,

Fifth—That the county in which the action is pending is a party to the suit; or,

Sixth—That the judge is a material witness for the party applying; or,

Seventh—When the affidavit shall show to the satisfaction of the court or judge that the convenience of witnesses and the ends of justice would be promoted thereby.

In either case the court in term or the judge in vacation shall change the venue in such action, or call on some other judge of the supreme court of the territory to preside in the trial of the case, as hereinafter provided. [S. L. 1877, p. 25, § 1.]

Proceedings when change granted—Undertaking.

SEC. 3401. When a change of venue is directed for any of the causes mentioned in the fourth, fifth or seventh sub-divisions of the next preceding section, the judge shall send the cause to the most convenient county to which the same objections do not apply as to either party or to which they are the least applicable, and the clerk of the court in which the suit is pending shall forthwith transmit the papers and transcript of the proceedings in the case to the clerk of the court to which the venue is changed, the party applying for the change first paying the costs thereof, which payment must be made within ten days after the order directing the change, or the application shall be deemed abandoned, and the clerk of the proper court shall receive the papers and docket the cause in its order, and the action shall stand for trial at the first regular term thereafter, and shall be tried or otherwise disposed of as if it had originated in that court; *Provided, however*, That the change of venue shall be deemed abandoned unless the applicant shall also, within the ten days aforesaid, give an undertaking to the opposite party, with sureties to be approved by the judge of the court, to the effect that he will pay all costs that may be adjudged against him in such case; and if the abandonment is by the plaintiff, the cause shall be considered discontinued and the costs taxed against said plaintiff and judgment therefor rendered. And if the abandonment is by the defendant, he shall be adjudged in default, and whatever pleadings he may have on file disregarded, and the plaintiff may prove his case as in other defaults; *Provided also*, That when the application is based upon the first, second, third and sixth sub-divisions of the next preceding section, the judge shall call upon some other justice of the supreme court of the territory to preside in the trial of the said cause, who shall proceed in the case as if it had originally been brought before him. [S. L. 1877, p. 26, § 2. S. L. 1879, ch. 85, § 1.]

Change in vacation—Notice to adverse party.

SEC. 3402. No change of venue shall be granted in vacation, unless the opposite party has had fifteen days notice of the time and place of the hearing of the application. [S. L. 1877, p. 27, § 2.]

Where criminal cases tried.

SEC. 3403. Every criminal case must be tried in the county in which the indictment is found, except as otherwise hereinafter provided. [S. L. 1877, p. 27, § 4.]

Application for change in criminal case and proceedings thereon.

SEC. 3404. The defendant in a criminal action may make an affidavit stating that he believes he cannot receive a fair trial owing to the bias or prejudice of the judge or the excitement or prejudice against him in the county, the prosecuting attorney may thereupon traverse by his affidavit the allegations of defendant, except those concerning the bias or prejudice of the judge, and the court or judge shall thereupon set down the issue so presented for trial before him at a stated time, at which time both parties shall present their witnesses, who shall be examined under oath orally, and if it appears to the court or judge, upon such hearing, that the trial would be more impartial in another county, the application shall be granted. [S. L. 1877, p. 27, § 5.]

When another judge called.

SEC. 3405. When the objection in a criminal action is to the judge, he shall call some judge of the supreme court to try said action, who shall try or continue the cause as if it had been originally brought before him. [S. L. 1877, p. 27, § 6.]

To what county change granted—Duty of officers.

SEC. 3406. When the affidavit is founded upon excitement or prejudice in the county, against the defendant, and the court or judge shall grant a change, it shall be to the most convenient county; the clerk must thereupon make a transcript of the proceedings and orders of the court in the case, and having sealed up the same, together with the original papers in the case, deliver them to the sheriff, who must without delay deposit them in the clerk's office of the court to which the change is made and make returns accordingly. [S. L. 1877, p. 27, § 7.]

As to further proceedings on change of venue in criminal cases, see §§ 3272-3274.

When jurisdiction complete after change.

SEC. 3407. The jurisdiction of the court to which the change is directed is complete upon the filing of original papers and transcript in the clerk's office in that court, and the cause must be docketed and stand for trial at the first regular term thereafter, unless continued for cause. [S. L. 1877, p. 27, § 8.]

But one change granted.

SEC. 3408. Nothing in this chapter shall authorize the granting of more than one change of venue and one change of judge in any case, civil or criminal, but in either case both sides shall be heard to urge their objections to any county or judge in the first instance, and the change of venue shall be to the most convenient county to which the objections of parties do not apply or are the least applicable, and the same rule shall govern the selection of another judge. [S. L. 1877, p. 28, § 9.]

When application to be made.

SEC. 3409. No change of venue provided for in this chapter shall be denied because of the time when the application is presented, provided it is presented before the jury are empaneled to try the cause. [S. L. 1877, p. 28, § 10.]

CHAPTER 4.

INTERPRETERS.

SECTION.	SECTION.
3410. Appointment of interpreters.	3411. Fees, how paid.

Appointment of interpreters.

SEC. 3410. In all the courts of this territory, whenever it becomes necessary to summon and employ the services of an interpreter, the presiding judge or justice thereof may appoint and summon any suitable person possessing the requisite knowledge of the language to be interpreted, to act in that capacity, who shall be duly sworn or affirmed to make a true interpretation according to the best of his skill and ability. [S. L. 1882, ch. 56, § 1.]

Fees, how paid.

SEC. 3411. In all civil business the court shall require a deposit in the hand of the clerk in advance of a sum sufficient to pay such interpreter before he shall be summoned and employed and sworn, and the costs of such interpretation shall be taxed as a part of the costs in every civil case, and in all criminal business the compensation for their services, shall become a county charge, and paid as other county indebtedness. [S. L. 1882, ch. 56, § 3.]

For prescribed fees of interpreters, see § 1202.

CHAPTER 5.

OATHS.

SECTION.	SECTION.
3412. Who may administer.	3413. Affirmation and form of oath.

Who may administer.

SEC. 3412. The following officers are authorized to administer oaths, viz.: The chief justice and associate justices of the supreme court, clerks of the supreme and district courts, and their deputies, and the court commissioners appointed by or under authority of the laws of the United States, county clerks and their deputies, and county commissioners, within their respective counties, judges of the probate courts, justices of the peace and notaries public, within their respective counties. [S. L. 1884, ch. 29, § 2.]

Affirmation and form of oath.

SEC. 3413. Persons conscientiously opposed to swearing may affirm and shall be subject to the penalties of perjury as in case of swearing. Whenever any person shall be required to take an oath either in any court or before any person duly authorized to administer oaths it shall be lawful for the court or officer administering the same to administer it in the following form to-wit.: The person swearing shall with his or her right hand uplifted swear, concluding with the words, "So help me God." [S. L. 1882, ch. 74, § 2.]

Person may be sworn in any manner binding on his conscience, § 2340.

CHAPTER 6.

TIME, LEGAL STANDARD OF.

SECTION 3414. Legal standard prescribed.

Legal standard prescribed.

SEC. 3414. The mean local time of the one hundred and fifth meridian west of Greenwich is and the same is hereby adopted and declared to be the standard legal time for all points in the Territory of Wyoming, and computations of legal time shall be made thereby, using such standard time as a basis, [S. L. 1884, ch. 95, § 1.]

TITLE 41. PROCEDURE IN THE COURTS OF JUSTICES OF THE PEACE.

CHAPTER 1. JURISDICTION IN CIVIL CASES.
CHAPTER 2. PROCEDURE IN CIVIL CASES.
CHAPTER 3. JURISDICTION AND PROCEDURE IN CRIMINAL CASES.

CHAPTER 1.

JURISDICTION IN CIVIL CASES.

SECTION.
3415. Territorial extent of jurisdiction.
3416. General jurisdiction and authority.
3417. Cases in which jurisdiction denied.
3418. Place of office—Where process issued.
3419. Not to have office with attorney.
3420. Application of general law to proceedings before justice.

Territorial extent of jurisdiction.

SEC. 3415. The jurisdiction of justices of the peace, in all cases, shall, unless otherwise directed by law, be limited to the counties wherein they shall reside. [C. L. 1876, ch. 71, p. 395, § 1.]

General jurisdiction and authority.

SEC. 3416. Justices of the peace, within and co-extensive with their respective counties, shall have jurisdiction and authority:

First—To administer an oath or affirmation authorized or required by law to be administered;

Second—To take the acknowledgment of deeds, mortgages, and other instruments of writing;

Third—To solemnize marriages;

Fourth—To issue subpœnas for witnesses, and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions;

Fifth—To try the action for forcible entry and detention, or detention only, of real property;

Sixth—To proceed against sureties for costs and amount of bail, on the stay of execution on their dockets;

Seventh—To issue attachments, and proceed against the goods and effects of debtors in certain cases, as provided by law;

Eighth—To issue executions on judgments rendered by them;

Ninth—To try the right of the claimant to property taken in execution or on attachment;

Tenth—Of all matters in controversy, when action is brought for the recovery of money only on a contract express or implied, when the sum claimed does not exceed three hundred dollars; whether the sum claimed be an original specified amount in a contract, or the balance of unadjusted accounts or claims between the parties; *Provided*, Controversies involving any amount in excess of one hundred dollars, may be brought originally in the district court of the proper county, and the costs thereof shall abide the result of the suit;

Eleventh—Of an action for damages for an injury to the person, or for a trespass upon real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars;

Twelfth—Of an action for a penalty not exceeding one hundred dollars, given by the statutes;

Thirteenth—Of an action upon bonds, conditioned for the payment of money, where the amount claimed does not exceed three hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due;

Fourteenth—An action may be brought upon any instrument payable in installments, as each installment becomes due, when such instrument and amount shall be within a justice's jurisdiction, as herein provided;

Fifteenth—To enter judgment on the confession of a defendant, when the amount does not exceed a justice's jurisdiction as herein provided;

Sixteenth—In all civil actions other than those based upon a contract express or implied, to be brought against a constable for failure to pay over any money by him collected, to the party thereto entitled, or for any neglect of duty by such constable in his official capacity, when the sum sought to be recovered by the plaintiff in such action shall not exceed one hundred dollars. [C. L. 1876, ch. 71, p. 395, § 2. S. L. 1886, ch. 90, § 1.]

Cases in which jurisdiction denied.

SEC. 3417. Justices of the peace shall not have cognizance of any action:

First—To recover damages for an assault, or assault and battery, where the damages exceed one hundred dollars;

Second—In actions for malicious prosecution;

Third—In actions against justices of the peace or other officers, for misconduct in office, except in cases provided in this chapter, or by other statutes;

Fourth—In actions for slander, verbal or written;

Fifth—In actions on contract pertaining to real estate, except leases, and those contracts coming within the forcible detainer law;

Sixth—In actions for false imprisonment;

Seventh—In actions for libel, or criminal conversation, or seduction, or upon a promise to marry;

Eighth—Nor in actions in which the title to real estate is sought to be recovered, or may properly be drawn in question. [C. L. 1876, ch. 71, p. 396, § 3.]

Place of office—When process issued.

SEC. 3418. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere, but he may issue process in any place in the county. [C. L. 1876, ch. 71, p. 369, § 4.]

Not to have office with attorney.

SEC. 3419. No justice of the peace shall hold his office in the same room with a practicing attorney, u less such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear, or practice as an attorney, in any case tried before such justice. [C. L. 1876, ch. 71, p. 396, § 5.]

Application of general law to proceedings before justice.

SEC. 3420. Every justice of the peace in this territory, after qualifying, is hereby authorized to hold his court for the trial of all actions of which jurisdiction is given him by law, and to hear, try, and determine the same according to law; and for that purpose, when no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature are to apply to such justice's court, so far as the same may be applicable, and not inconsistent with the provisions of this chapter. [C. L. 1876, ch. 71, p. 396, § 6.]

CHAPTER 2.

PROCEDURE IN CIVIL CASES.

SUB-DIVISION 1. ACTIONS, HOW COMMENCED.
SUB-DIVISION 2. APPEARANCE AND PLEADINGS.
SUB-DIVISION 3. CHANGE OF PLACE OF TRIAL.
SUB-DIVISION 4. MEANS OF SECURING WITNESSES.
SUB-DIVISION 5. DEPOSITIONS AND COMMISSIONS.
SUB-DIVISION 6. TRIAL.
SUB-DIVISION 7. ENTERING AND SETTING ASIDE JUDGMENTS.
SUB-DIVISION 8. SETTING OFF ONE JUDGMENT AGAINST ANOTHER.
SUB-DIVISION 9. JUDGMENT BY CONFESSION.
SUB-DIVISION 10. APPEALS.
SUB-DIVISION 11. EXECUTIONS.
SUB-DIVISION 12. STAY OF EXECUTION.
SUB-DIVISION 13. SALE ON EXECUTION.
SUB-DIVISION 14. REPLEVIN.
SUB-DIVISION 15. TRIAL OF THE RIGHT OF PROPERTY.
SUB-DIVISION 16. ATTACHMENT AND GARNISHMENT.
SUB-DIVISION 17. FORCIBLE ENTRY AND DETAINER.
SUB-DIVISION 18. CONTEMPT.
SUB-DIVISION 19. ARBITRATION.
SUB-DIVISION 20. GENERAL PROVISIONS.

SUB-DIVISION I. ACTIONS, HOW COMMENCED.

SECTION.
3421. Docket and entries therein.
3422. Actions, how commenced.
3423. By whom actions may be brought.
3424. Style and requisites of summons.
3425. Service and return of summons.
3423. Service on corporations.
SECTION.
3427. Service on insurance or foreign corporation.
3428. Service upon minor over fourteen years.
3429. Special appointment to serve process.
3430. Procedure when part of defendants not served.

Docket and entries therein.

SEC. 3421. Every justice of the peace shall keep a docket in which he shall enter:

First—The title of all causes commenced before him;

Second—The time when the process was issued against the defendant, and the particular nature thereof, and to what officer delivered;

Third—The time when the parties appeared before him, either without, or upon the return of process;

Fourth—A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off and the amount claimed;

Fifth—Every adjournment, stating at whose request, and for what time;

Sixth—The time when the trial was had, stating whether the same was by the jury or by the justice;

Seventh—The verdict of the jury, and when rendered, and the judgment thereon;

Eighth—The judgment of the court;

Ninth—The time of issuing execution, and the name of the officer to whom delivered;

Tenth—The fact of an appeal having been taken and allowed, and when taken and allowed;

Eleventh—Satisfaction of judgment and when made;

Twelfth—And such other entries as may be material, showing the proceedings before the justice. [C. L. 1876, ch. 71, p. 397, § 7.]

Actions, how commenced.

SEC. 3422. Civil actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. In the former, the action is deemed commenced upon delivery of the writ to the constable to be served, and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case on the appearance of the parties. [C. L. 1876, ch. 71, p. 397, § 8.]

By whom actions may be brought.

SEC. 3423. All persons over fourteen years of age, and under twenty-one, when subject to no disability, other than being a minor, may sue or be sued, and when plaintiff, shall sue by a next friend, to be nominated by him and appointed by the justice before suit shall be commenced, and such next friend shall be liable for the cost chargeable to the plaintiff. When such minor shall be sued, he shall appear by guardian, to be nominated by him and appointed by the court, before any further proceedings shall be had in the case; but judgment shall be rendered against the minor defendant only. In either case, if plaintiff or defendant neglect or refuse to nominate a next friend or guardian, the justice or court, as the case may be, shall appoint some discreet person to be such next friend or guardian, who, in any case, shall consent in writing, which consent shall be filed with the justice. [C. L. 1876, ch. 71, p. 397, § 9.]

Style and requisites of summons.

SEC. 3424. The style of the summons shall be, "Territory of Wyoming, ———— County;" it shall be dated the day it is issued, signed by the justice issuing the same, directed to the constable or sheriff of the proper county; it must contain the name of the defendant or defendants, if known; if unknown, a fictitious name to be used, and command the officer serving the same to summon the defendant or defendants to appear before such justice, at his office in ———— County, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him; and there shall be indorsed on the writ the amount for which the plaintiff will take judgment, if the defendant fail to appear. Judgment shall not be rendered for a larger amount and costs than is claimed, nor for such amount without proof of the correctness of the plaintiff's demand. [C. L. 1876, ch. 71, p. 398, § 10.]

Service and return of summons.

SEC. 3425. The summons must be returnable not more than twelve days from its date and must be served at least three days before the time of appearance, as follows:

First—By delivering a copy of the summons with the indorsement thereon (certified by the constable or person serving the same, to be a true copy,) to the defendant, or leaving the same at his usual place of residence or business, with some person over ten years of age, residing or staying thereat, to whom the contents shall be explained;

Second—An acknowledgment on the back of the summons, or the voluntary appearance of a defendant is equivalent to service. [C. L. 1876, ch. 71, p. 398, § 11.]

Service on corporations.

SEC. 3426. A summons against a corporation may be served upon the the president, mayor, chairman of the board of directors, or trustees, or other chief officer; or if none of these shall be found in the county, upon the cashier, treasurer, secretary, clerk or agent; or if none of the aforesaid officers can be found, by a copy left at an office or usual place of business of such corporation with the person having charge thereof. [C. L. 1876, ch. 71, p. 398, § 12.]

Service on insurance or foreign corporation.

SEC. 3427. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency, and when the defendant is a foreign corporation, having an agent in this territory, the service may be upon such agent. [C. L. 1876, ch. 71, p. 398, § 13.]

Service upon minor over fourteen years.

SEC. 3428. When the defendant is a minor more than fourteen years of age, service upon him alone shall be sufficient, the manner of service may be the same as in the case of adults. [C. L. 1876, ch. 71, p. 398, § 14.]

Special appointment to serve process.

SEC. 3429. Every justice issuing any process authorized by this chapter upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person not being a party to the suit, to execute the same by an indorsement on the process to the following effect: "At the request and risk of the plaintiff, I authorize A. B. to execute and return this writ. E. F., justice of the peace." And the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligation, and shall receive the same fees for his services. [C. L. 1876, ch. 71, p. 398, § 15.]

Procedure when part of defendants not served.

SEC. 3430. Where an action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

First—If the action be against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the justice otherwise direct, and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only, as that it may be enforced against the joint property of all, and the separate property of the defendant served;

Second—If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served, in the same manner as if they were the only defendants. Nothing in this chapter shall be so construed as to make a judgment against one or more defendants, jointly or severally liable, a bar to another action against those not served. [C. L. 1876, ch. 71, p. 399, § 16.]

SUB-DIVISION 2. APPEARANCE AND PLEADINGS.

SECTION.
3431. Time for appearance.
3432. Pleadings and amendments.
3433. Forming issue in action on instrument or account.
3434. When continuance granted—Costs.
3435. Proceedings when title, etc., to land comes in question.
SECTION.
3436. What may be subject to set-off.
3437. In whose name action brought—Set-off against assignee.
3438. Action by trustee—Set-off.
3439. Judgment in case of set-off.
3440. Judgment for defendant on set-off.

Time for appearance.

SEC. 3431. The parties are entitled to one hour in which to appear after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, be engaged in the trial of another cause. In such case the justice may postpone the time of appearance until the close of such trial. [C. L. 1876, ch. 71, p. 399, § 17.]

Pleadings and amendments.

SEC. 3432. Pleadings in justice's court may be oral or in writing at the election of parties; if oral, the substance of them must be entered by the justice in his docket, if in writing, they must be filed in his office, and reference to them made in his docket; if a written instrument be the ground of action or defense, it shall be filed as a part of the pleadings, if they are oral. If the action or defense shall be a matter of account, a bill of items shall be filed, at, or before the time of joining issue, and no evidence shall be allowed of other items of account than those filed, unless leave to amend shall be granted, which amendments may be allowed by the court in furtherance of justice, unless such amendment shall introduce such new matter as shall, in the opinion of the court, work a surprise to the opposite party, in which case such amendment shall not be allowed, unless the party asking to amend shall consent to an adjournment, and pay the cost incident thereto. To prove the surprise, the oath of the party, or his agent, shall be required in cases of doubt by the court. [S. L. 1876, ch. 71, p. 399, § 18.]

Forming issue in action on instrument or account.

SEC. 3433. Whether the instrument in writing, or items of account, be relied upon by the defendant as a defense, or counter-claim, it shall be sufficient to file them with the justice, stating the amount claimed thereon, and the court, or jury, shall proceed and try the matters of difference between the parties, without further form of issue. [S. L. 1876, ch. 71, p. 399, § 19.]

When continuance granted—Costs.

SEC. 3434. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if sufficient cause be shown, upon oath, adjourn the cause for any time not exceeding thirty days, without costs, except one dollar each for justice and constable. If the application be made on an adjourned day for a continuance, the costs of summoning and attendance of witnesses, shall be paid by the party seeking the continuance, if the court shall so order. [C. L. 1876, ch. 71, p. 399, § 20.]

Proceedings when title, etc., to land comes in question.

SEC. 3435. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to land or boundaries, shall be disputed or brought in question by the other party, by pleading or evidence, the justice shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit. [C. L. 1876, ch. 71, p. 400, § 21.]

What may be subject of set-off.

SEC. 3436. The defendant may set-off against the claim of the plaintiff, when such claim arises out of any form of contract, any demand arising between or existing between all the parties to the action when the same was commenced, when such demand shall arise upon a judgment or upon a contract express or implied, written or unwritten, sealed or without seal, liquidated or unliquidated, if capable of liquidation by calculation, and if the set-off be founded upon a bond, with penalty, the amount equitably due thereon to be set-off. [C. L. 1876, ch. 71, p. 400, § 22.]

In whose name action brought—Set-off against assignee.

SEC. 3437. All actions must be brought in the name of the real party in interest, and when the action is in the name of the assignee, and is founded upon any contract, other than a promissory note or bill of exchange, transferred before due, any demand against the assignor, belonging to the defendant, in good faith, before notice of such assignment may be set off against the plaintiff, if the demand be such that it might be set off while the claim belonged to the assignor. [C. L. 1876, ch. 71, p. 400, § 23.]

Action by trustee—Set-off.

SEC. 3438. If the suit shall be in the name of a trustee or other person in a representative capacity for the use of a *cestui que trust* or other party in interest, which action shall be allowed, notwithstanding the provisions of the preceding section, it shall be lawful for the defendant to set off any claim he may hold, at the time said suit was commenced against those whom the plaintiff represents, if the same might have been set off in an action brought by those beneficially interested. [C. L. 1876, ch. 71, p. 400, § 24.]

Judgment in case of set-off.

SEC. 3439. If the amount of the set-off duly established, equals the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action. If it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. [C. L. 1876, ch. 71, p. 400, § 25.]

Judgment for defendant on set-off.

SEC. 3440. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff, where the contract which is the subject of the suit, shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action. [C. L. 1876, ch. 71, p. 400, § 26.]

SUB-DIVISION 3. CHANGE OF PLACE OF TRIAL.

SECTION.
3441. Cause for change—When granted.
3442 Costs on change.
3443. When change granted, time of trial, etc., to be fixed.
3444. Transfer of transcript and papers.

SECTION.
3445. But one change granted.
3446. When another justice shall be called to try the case.
3447. Proceedings on change of justice.
3448. Fees of trial justice when change granted.

Causes for change—When granted.

SEC. 3441. If, on the return of process or the appearance of parties in any cause or proceeding, civil or criminal, either party, his agent or attorney, shall make affidavit that the justice before whom the same is pending, is a material witness for said defendant, without whose testimony he cannot safely proceed to a trial thereof; or that from prejudice, bias or other cause, he believes such justice will not decide impartially in the matter; or if the justice is near of kin to the plaintiff, then, in such case, the said justice shall transfer said suit, and all other papers appertaining to the same, to some other justice of the same or adjoining precinct, who may thereupon proceed to hear and determine the same in the same manner as it would have been lawful for the justice to have done before whom the said cause or proceeding was commenced. [C. L. 1876, ch. 71, § 98.]

Costs on change.

SEC. 3442. When a change of place of trial shall be ordered upon the application of the plaintiff, all costs up to the certificate of the justice transferring the cause, shall be paid before a transfer of the papers shall be made; and if such order be made upon the application of the defendant, he shall pay one dollar and fifty cents, justice cost, for making his certificate, and the costs made by the plaintiff shall abide the result of the trial, and when collected before the justice to whom the case is transferred, shall be paid by him to the justice from whom the cause was removed; *Provided*, That this sub-division shall in nowise change the liability of parties to the justice or constable for official services rendered at their request. [C. L. 1876, ch. 71, § 99.]

When change granted, time of trial, etc., to be fixed.

SEC. 3443. When an order of transfer shall be made, the justice making it, shall name the day, hour of the day, and justice, when and before whom the parties shall appear for trial, unless the parties shall agree to a time, in which case the justice shall fix the time agreed upon, and name the fact of agreement in his order of transfer. When the defendant is under arrest, a reasonable amount of bail shall be fixed by the justice for the appearance of the defendant before the proper justice, and if such bail be not given, the defendant shall be ordered committed, and the time fixed for trial shall be as soon thereafter as the nature of the case will allow. [C. L. 1876, ch. 71, § 100.]

Transfer of transcript and papers.

SEC. 3444. The justice shall seal up in a package a certified transcript of all his docket entries, together with papers filed in said cause, and may deliver them to any person agreed upon by the parties, or their agents, or if no agreement shall be made, he may appoint some discreet person not interested in the proceedings, or of kin to the parties, or he shall take and deliver the same in person, and it shall be the duty of the justice, or other person having in charge such papers, to deliver the same before the time fixed for the trial, under a penalty of twenty-five dollars, in case of failure. [C. L. 1876, ch. 71, § 101.]

But one change granted.

SEC. 3445. In no case shall there be more than one change of place of trial allowed. [C. L. 1876, ch. 71 § 102.]

When another justice shall be called to try the case.

SEC. 3446. When any justice of the peace shall grant a change of place of trial, for any of the causes set forth in section thirty-four hundred and forty-one, and there is no other justice of the peace in his precinct, or if any other justice of the peace therein is disqualified, absent, unable to act, or objected to by either party to the cause, the justice of the peace granting such change of place of trial, shall immediately notifiy the next nearest justice of the peace qualified to try the cause, to appear at the office of the justice granting a change of place of trial upon a day and hour agreed upon, by the parties to the action, and if no time be agreed upon, then the justice granting such change of place of trial shall fix the day and hour for trial; and the notice to said justice to appear and try the case shall be sent by whom and in such manner as may be agreed upon by the parties to the action, and if no agreement be made, then in such manner as the justice granting such change may deem safe and expedient; but in case the justice selected to appear and try the case is absent, disqualified or unable to attend, then the next nearest justice within the county shall be notified to appear and try the case. [S. L. 1884, ch. 51, § 1.]

Proceedings on change of justice.

SEC. 3447. The justice granting such change shall make all necessary docket entries, issue all required processes and have full jurisdiction of the case up to the time the justice who is to take his place appears, when he shall turn over his docket and all papers in the case to the justice selected to try the same, and such justice shall take charge of, and be responsible for, the docket, continue the docket entries and issuance of all processes and papers, to the close of trial and judgment, whereupon he shall return said docket, and all the papers in the case, to the justice having original jurisdiction thereof, as aforesaid, and such justice shall issue all further processes, writs of execution and orders, and grant appeals, stay of execution, and perform any other act or thing required by law, the same as if no change of place of trial or of justice had been granted or had. Each justice shall be entitled to the fees now allowed by law for all services rendered in the case, but no fees shall be allowed to both justices for performing the same service; and in no case shall there be more than one change of justice allowed. [S. L. 1884, ch. 51, § 2.]

Fee of trial justice when change granted.

SEC. 3448. The justice who shall be summoned as in this sub-division provided, from his precinct to try a case, shall be allowed five dollars for each day or part of a day, actually and necessarily spent in trying such case, and fifteen cents for each mile actually and necessarily traveled in going to and returning from the place of trial from his office, which fees and mileage shall be taxed as costs in the case. [S. L. 1884, ch. 51, § 3.]

SUB-DIVISION 4. MEANS OF SECURING WITNESSES.

SECTION.
3449. Justice may issue subpœnas.
3450. Service of subpœna.
3451. When fees not allowed for serving subpœna.
3452. Costs when witness not examined.

SECTION.
3453. When justice may issue attachment for witness.
3454. Execution of attachment—Fees.
3455. Penalty for refusing to testify.
3456. Liability of witness to parties.

Justice may issue subpœnas.

SEC. 3449. Any justice of the peace may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony. [C. L. 1876, ch. 71, p. 401, § 27.]

Service of subpœna.

SEC. 3450. A subpœna may be served by a sheriff, coroner, constable, or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence with some person belonging to the family, of suitable age. [C. L. 1876, ch. 71, p. 401, § 28.]

When fees not allowed for serving subpœnas.

SEC. 3451. When not served by an officer or some person deputed for the purpose by a justice of the peace, no fees shall be charged in the suit for serving it. [C. L. 1876, ch. 71, p. 401, § 29.]

Costs when witness not examined.

SEC. 3452. If any witness having been subpœnaed, attend, and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party confessing the matter, or otherwise render unnecessary the examination of such witness. [C. L. 1876, ch. 71, p. 401, § 30.]

When justice may issue attachment for witness.

SEC. 3453. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpœnaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness; *Provided however*, That no attachment shall issue against a witness, unless his mileage, and one day's attendance has been tendered or paid in advance; *Provided further*, That the witness had demanded the same. [C. L. 1876, ch. 71, p. 401, § 31.]

Execution of attachment—Fees.

SEC. 3454. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party requiring such attachment shall pay all costs of such attachment. [C. L. 1876, ch. 71, p. 401, § 32.]

Penalty for refusing to testify.

SEC. 3455. When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding twenty-five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the Territory of Wyoming against the delinquent, and may be enforced against his person by imprisonment, or against his property. Money collected as fines shall be paid into the county treasurer for the support of common schools in said county. [C. L. 1876, ch. 71, p. 401, § 33.]

Liability of witness to parties.

SEC. 3456. Every person subpœnaed as aforesaid and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for damages, which such party may have sustained by his non-appearance; *Provided*, That said witness had one days attendance and his mileage tendered or paid in advance, if demanded by him. [C. L. 1876, ch. 71, p. 401, § 34.]

SUB-DIVISION 5. DEPOSITIONS AND COMMISSIONS.

SECTION.
3457. Procedure in taking depositions.
3458. Depositions of witness unable to attend trial
3459. Commission to take evidence out of territory.
SECTION.
3460. Manner of issuing and executing commission—Continuances.

Procedure in taking depositions.

SEC. 3457. Either party in any civil suit pending before a justice, may cause the deposition of a witness who resides more than thirty miles from the place of trial, to be taken anywhere in the territory, as follows:

First—The moving party shall give notice to the other in writing, of the time, place and person, where, when and before whom the said party will appear in order to take the deposition of witnesses, naming such witness or witnesses, which time, shall allow one day for every twenty miles of travel by by the usual traveled route from the place where the trial is to be had, to the place where the deposition is to be taken, and if Sunday intervene, it shall be excluded in the calculation of days. Such deposition may be taken upon written or oral interrogations, as the parties, or either of them, may elect, but if written, the party propounding the same shall be confined thereto;

Second—The party named in such notice to take such evidence, or any party who shall be substituted by mutual consent in case of absence of the party named, or other disability, is hereby authorized to administer an oath to such witness, and issue subpœnas with like powers of justices of the peace, and enforce witnesses attendance before him;

Third—It shall be the duty of the person before whom such deposition is taken, to reduce to writing the evidence given by the witness, together with such interrogatories (if oral) as shall be necessary to render the answers of the witnesses intelligible; but if interrogatories are in writing, they must be attached to the depositions and returned therewith;

Fourth—When the evidence shall be concluded, it shall be carefully read over to the witness, who shall subscribe the same, and said person so taking such deposition, shall attach a certificate to the effect that the witness appeared before him, was sworn according to law, and signed the evidence as reduced to writing, with a further statement what party or parties appeared, and for whom;

Fifth—The person so taking the depositions of witnesses, shall attach to such deposition all exhibits with reference thereto, as exhibit "A and B" and so on, and also attach the notice to his return under which such evidence was taken;

Sixth—All being completed, the papers or depositions shall be securely sealed and mailed to the justice before whom the cause is pending, or may be forwarded in any way that the parties may in writing stipulate;

Seventh—Substantial compliance with the foregoing regulations shall only be required by the justice, where the parties appeared in person or by agent, before the party taking the depositions; but where only the moving party appeared, a full compliance with this law shall be necessrry to entitle such deposition to be read. [C. L. 1876, ch. 71, p. 402, § 35.]

For manner of taking depositions, see also § 2625.

Depositions of witnesses unable to attend trial.

SEC. 3458. The evidence of witnesses who cannot attend before a justice on account of age, sickness, or any bodily infirmity, may be taken in the manner above prescribed, whenever the witness may reside in the territory, and also the deposition of a witness about to leave, and being unable to be present at the trial, may be taken under the provisions of this sub-division; *Provided*, That the deposition of no person shall be read if such person shall be present in court at the time of trial, or can be easily subpœnaed so as not to delay proceedings before the court. [C. L. 1876, ch. 71, p. 402, § 36.]

Commission to take evidence out of territory.

SEC. 3459. After an issue of fact shall be joined before a justice, it shall be competent for him, upon the application of either party, to issue a commission to take the evidence of a witness or witnesses residing out of the territory, after the fact of such residence shall be satisfactorily proven to him by oath or otherwise. [C. L. 1876, ch. 71, p. 403, § 37.]

Manner of issuing and executing commissions—Continuances.

SEC. 3460. The manner of issuing such commission and the execution and return thereof shall substantially conform to the law and rules governing the issuance of commissions in the district court, and the pending cause shall be continued from time to time, as shall in the opinion of the justice be necessary in order to have such commissions executed, any law relating to continuance to the contrary notwithstanding; *Provided*, The party asking such commission shall swear that he cannot safely proceed to trial without the evidence sought by such commission; *Provided further*, Said party shall state what he expects to prove by such witness or witnesses, and if the opposite party shall stipulate in writing that if such witness were present he would so swear (without admitting the fact), then no commission shall issue nor continuance be granted, and the evidence shall be liable to any and all objection that could be taken to the witness if he were present; *Provided further*, That the justice shall be satisfied that the party applying for such commission has used due diligence in obtaining the testimony of such witness or witnesses. [C. L. 1876, ch. 71, p. 403, § 38.]

SUB-DIVISION 6. TRIAL.

SECTION.
3461. Justice to try case, if no jury demanded.
3462. Trial on voluntary appearance of parties.
3463. Trial on default.
3464. Proceedings upon trial by jury—Oaths of jury and witnesses.
3465. Discharge of jury on failure to agree.
3466. Juror failing to appear, subject to fine.
SECTION.
3467. Constable to attend trial, etc.
3468. Jury to attend on continuance.
3469. Trial of competency of juror.
3470. When new trial granted.
3471. Notice of motion for new trial.
3472. Fees of jurors.
3473. Bill of exceptions, how taken.

Justice to try case, if no jury demanded.

SEC. 3461. At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law. [C. L. 1876, ch. 71, p. 403, § 39.]

Trial on voluntary appearance of parties.

SEC. 3462. When the parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment and execution, in all respects in the same manner as if the summons had been issued, served and returned. [C. L. 1876, ch. 71, p. 403, § 40.]

Trial on default.

SEC. 3463. If either party shall fail to appear within one hour after the time specified for the return of the process, or after the hour of adjournment, the justice shall dismiss the suit, or proceed to hear the proof of the party present, and render judgment thereon accordingly, as the case may require. [C. L. 1876, ch. 71, p. 403, § 41.]

Proceedings upon trial by jury—Oaths of jury and witnesses.

SEC. 3464. In every action to be brought by virtue of this chapter, it shall be lawful for either of the parties to the suit, or for the attorney of either of them, after issue be joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that the said action be tried by a jury of six persons, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand the justice shall direct the sheriff or any constable of the county, who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear (or affirm, as the case may be,) that you will perform the duties required of you according to the best of your abilities, without partiality to either party." And if, in the opinion of the justice, the jurors above required, cannot appear forthwith, for the trial of the cause, the justice shall adjourn the cause for such reasonable time as he may think proper, to enable the officer to summon the said jurors, and for them to appear, which time shall be specified in the venire. The officer, or person sworn, shall write down the names of twelve persons, being inhabitants and electors of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately, three names, and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of the said list, three names, and shall thereupon issue a venire requiring the officer to summon the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause, named in said venire; *Provided*, That if any of said jurors shall not attend, at the time so summoned to appear, or in case there shall be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected, shall take the following oath or affirmation: "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between ————, plaintiff, and ————, defendant, and true verdict give according to law and the evidence given you in court, so help you God." And after having been sworn, they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence; and to each witness on any trial the justice shall administer the following oath or affirmation, to-wit: "You do solemnly swear, (or affirm, under the pains and penalties of perjury,) that the evidence you shall give in this matter of difference between ————, plaintiff, and ————, defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God." And after hearing the proofs and allegations, the jury shall be kept together in some convenient place until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following oath, to-wit: "You do solemnly swear that you will, to the utmost of your ability, keep every person sworn in this inquest, together in some private, convenient place, without drink, except water; you will not suffer any person to speak to them, or speak to them yourself, unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice, publicly, who is hereby required to enter it on his docket and give judgment and award execution thereupon in manner hereinafter directed. [C. L. 1876, ch. 71, p. 403 § 42.]

Discharge of jury on failure to agree.

SEC. 3465. Whenever a justice shall be satisfied that a jury sworn in any cause before him, after having been out any reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment. [C. L. 1876, ch. 71, p. 405, § 43.]

Juror failing to appear subject to fine.

SEC. 3466. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. [C. L. 1876, ch. 71, p. 405, § 44.]

Constable to attend trial, etc.

SEC. 3467. The constable shall be in attendance on the court, at and during the progress of the trial; and if, from challenge or other cause, the panel shall not be full, he may fill the same by summoning talesmen from the bystanders or from the precinct. [C. L. 1876, ch. 71, p. 405, § 45.]

Jury to attend on continuance.

SEC. 3468. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for the trial without further notice. [C. L. 1876, ch. 71, p. 405, § 46.]

Trial of competency of juror.

SEC. 3469. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath. [C. L. 1876, ch. 71, p. 405, § 47.]

When new trial granted.

SEC. 3470. It shall be lawful for the justice before whom a cause has been tried on motion, and being satisfied that the verdictwas obtained by fraud, partiality or undue means, at any time within seven days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial if the motion be granted, of which the opposite party shall have at least three days notice. [C. L. 1876, ch. 71, p. 405, § 48.]

Notice of motion for new trial.

SEC. 3471. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons. [C. L. 1876, ch. 71, p. 405, § 49.]

Fees of jurors.

SEC. 3472. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive one dollar, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party. [C. L. 1876, ch. 71, p. 405, § 50.]

Bill of exceptions, how taken.

SEC. 3473. In all cases which shall be tried by or without a jury, before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill containing such exceptions, if truly alleged, with the point decided so that the same may be made part of the record in the cause. [C. L. 1876, ch. 71, p. 405, § 51.]

SUB-DIVISION 7. ENTERING AND SETTING ASIDE JUDGMENTS.

SECTION.
3474. Dismissal of action without prejudice.
3475. Proceedings where either party fails to appear.
3476. When and how judgment on default set aside.
SECTION.
3477. When judgment to be entered.
3478. Proceedings when claim exceeds jurisdictional amount.
3479. Offer to confess judgment in specified sum, and its effect.

Dismissal of action without prejudice.

SEC. 3474. Judgment that the action be dismissed without prejudice to an action, may be entered with costs in the following cases:

First—When the plaintiff voluntarily dismisses the action before it is finally submitted;

Second—When he fails to appear at the time specified in the summons or upon adjournment, or within one hour thereafter. [C. L. 1876, ch. 71, p. 405, § 52.]

Proceedings when either party fails to appear.

SEC. 3475. If the plaintiff fail to appear at the return day of the summons, the action must be dismissed. If the defendant fail to appear at the return day of the summons, his default shall be recorded, and the plaintiff may proceed to prove his claim, which being established, judgment shall be rendered in his favor, and if either party fail to attend at the time to which a trial has been adjourned, or either fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the proof on his part. [C. L. 1876, ch. 71, p. 406, § 53.]

When and how judgment on default set aside.

SEC. 3476. When judgment shall have been rendered against a defendant in his absence, who, having been served with summons, failed to appear, the same may be set aside upon the following conditions, cause being shown by affidavits:

First—That his motion be made within ten days after such judgment was entered, upon notice to the opposite party;

Second—That he pay the costs awarded against him;

Third—That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial, at least five days before time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before its trial. [C. L. 1876, ch. 71, p. 406, § 54.]

When judgment to be entered.

SEC. 3477. Upon a verdict, the justice must immediately render judgment accordingly, when the trial is by the justice; judgment must be entered immediately after the close of the trial, if the property of the defendant has been attached. In other cases it must be entered at either the close of the trial or within twenty-four hours thereafter, unless Sunday intervene, then forty-eight hours. [C. L. 1876, ch. 71, p. 406, § 55.]

Proceedings when claim exceeds jurisdictional amount.

SEC. 3478. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld. [C. L. 1876, ch. 71, p. 406, § 56.]

Offer to confess judgment in specified sum, and its effect.

SEC. 3479. If the defendant, any time before trial, offer in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he does not accept such offer before the trial, and fail to recover in the action a sum exceeding the offer, he cannot recover costs accrued after the offer, but costs must be adjudged against him; but the offer and failure to accept it, cannot be given in evidence to effect the recovery, otherwise than the costs as above provided. [C. L. 1876, ch. 71, p. 406, § 57.]

SUB-DIVISION 8. SETTING OFF ONE JUDGMENT AGAINST ANOTHER.

SECTION.
3480. When and by whom set-off allowed.
3481. Procedure to obtain set-off.
SECTION.
3482. Record of allowance or rejection—Executions.

When and by whom set-off allowed.

SEC. 3480. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed, one judgment, on the application of either party, and reasonable notice given to the adverse party, may be set-off against the other, by the justice before whom the judgment against which the set-off is proposed may be entered. [C. L. 1876, ch. 71, p. 406, § 58.]

Procedure to obtain set-off.

SEC. 3481. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice, a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is not satisfied in whole or in part, and that there is no appeal, and such transcript was obtained for the purpose of being a set-off against the judgment to which it was offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justice's certificate therein, that it has not been allowed in set-off. [C. L. 1876, ch. 71, p. 407, § 59.]

Record of allowance or rejection—Executions.

SEC. 3482. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment, rendered by another justice, to be set-off, he may file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it; if executions shall have been issued on judgments set-off, they shall be recalled by the proper justice, and the costs upon such execution set-off with the judgment, where the same is chargeable to the judgment debtor, the duty of the justice being to balance the larger judgment with the lesser one, to the amount of the lesser one, together with legal costs thereon. [C. L. 1876, ch. 71, p. 407, § 60.]

SUB-DIVISION 9. JUDGMENT BY CONFESSION.

SECTION.
3483. When justice may enter.
3484. Prerequisites to entering judgment.
SECTION.
3485. Confession to be filed—Costs.

When justice may enter.

SEC. 3483. Any justice of the peace in this territory may enter a judgment by confession, when the debts or damages shall not exceed the jurisdiction of the justice, with such stay of execution as may be agreed on by the parties interested in such judgment. [C. L. 1876, ch. 71, p. 407, § 61. S. L. 1886, ch. 90. § 1.]

Prerequisites to entering judgment.

SEC. 3484. No confession shall be taken, or judgment rendered thereon, unless the following requisites be complied with:

First—The defendant must personally appear before the justice;

Second—The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice;

Third—If it be for money due, or to become due, the confession must state concisely the facts out of which it arose, and must show that the sum confessed therefor is honestly due or to become due. If it is for the purpose of securing a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same. [C. L. 1876, ch. 71, p. 407, § 62.]

Confession to be filed—Costs.

SEC. 3485. The statement and affidavit must be filed with the justice of the peace, who must indorse upon it the time of filing, and must enter upon his docket a judgment for the amount confessed, with three dollars costs. [C. L. 1876, ch. 71, p. 407, § 63.]

SUB-DIVISION 10. APPEALS.

SECTION.
3486. Manner of taking appeal—Bill of exceptions.
3487. When undertaking required.
3488. Affidavit on appeal—Costs.
3489. Transcript—When appeal to be heard.
3490. When justice to recall execution.
3491. Docketing appeals—Order of trial—Parties.
3492. Proceedings on failure to perfect appeal.
3493. Irregularity in taking appeal—Correction.
3494. Limitation upon right of appeal.
3495. When appellant to pay costs and attorney fees.
SECTION.
3496. Liability of surety in undertaking.
3497. Succeeding justice to make transcript.
3498. Allowance of appeal may be enforced by attachment.
3499. Return of justice may be amended.
3500. Judgment on affirmance of justice's decision.
3501. Execution on such judgment, how collected.
3502. Remedy of surety on payment of judgment.
3503. Restitution on reversal of judgment.

Manner of taking appeal—Bill of exceptions.

SEC. 3486. A final judgment in a civil action before a justice of the peace may be taken to the district court, by appeal, as provided herein. When the case before the justice shall turn upon questions of law, and a bill of exceptions shall be filed as hereinbefore provided, such appeal shall have the same effect as a *certiorari* at the common law, and nothing but a review of the question of law involved shall be allowed in the district court except as herein provided; amendments to the record, so as to intelligently present the questions of law may be allowed. The fact or question whether a decision upon the points of law raised will dispose of the case, shall be determined by the appellate court, and if, in the opinion of the court, a ruling upon the law of the case will not settle the rights of the parties, the case shall stand for trial, *de novo*; in all other cases of appeal, a trial, *de novo*, shall be had, with a right to parties as of course to amend or substitute new pleadings, but not new bills of items, or particulars, or amendments thereof, without leave of court. The bill of exceptions, duly signed by the justice and properly entitled in the cause and court, shall be a sufficient authority for the clerk of the district court to docket the case, without any other papers, as in the case of appeals, and the question or questions involved in the bill of exceptions shall stand for argument and hearing in the same order as in appeals. If the bill of exceptions, or any of the questions raised in the same shall be decided in favor of the exceptor, but the decisions upon the point or points of law raised does not dispose of the case, the case shall stand for trial *de novo* without any undertaking or affidavit, but if the points raised in the bill of exceptions shall be decided against the exceptor, then the case shall not stand for trial unless the appeal shall have been perfected as in cases where no bill of exceptions has been taken. The justice shall hand, or cause to be handed, the bill of exceptions to the clerk of the district court, and shall receive a fee of fifty cents for signing and delivering the same, and the clerk of the district court shall be entitled to a fee of fifty cents for docketing the same, and no other, unless the case shall be tried *de novo*, when he shall receive fees as in other cases after docketing. [C. L. 1876, ch. 71, p. 408, § 66. S. L. 1879, ch. 48, § 1. S. L. 1886, ch. 60, § 779.]

For further authority of justice to sign bills of exception, see § 3473.

When undertaking required.

SEC. 3487. No appeal from a judgment rendered by a justice of the peace shall operate as a stay of execution unless the clerk of the district court take a written undertaking to the adverse party, executed on the part of the appellant, by sufficient surety, as provided in section thirty-one hundred and forty-two, and except to stay execution an undertaking shall not be required in cases taken by any method from a justice's court to a district court. [S. L. 1886, ch. 60, § 794.]

Affidavit on appeal—Costs.

SEC. 3488. Before the justice shall allow an appeal, he shall require the appellant, or his agent, to make an affidavit that such appeal is made in good faith, and not for the purpose of delay, and that he verily believes injustice has been done him by the verdict or judgment, and shall require the appellant to pay all justice and constable's costs for official services, but not the costs of witnesses, or subsistence or care of property attached or levied upon. The affidavit shall be made and said costs shall be paid within ten days after the rendition of the judgment. The justice shall be entitled to one dollar and fifty cents for his transcript and allowance of appeal, to be pre-paid. [C. L. 1876, ch. 71, p. 409, § 67; S. L. 1886, ch. 60, § 794.]

Transcript—When appeal to be heard.

SEC. 3489. An appeal being allowed, the justice shall make a certified transcript of his docket entries, and shall send up to the district court such transcript, together with all the original papers on file in the case, including the affidavit for the appeal, with a certificate or statement, over his signature as justice, that such transcript is correct, and that the original papers sent, are all that are on file in the case; such appeal papers may be given to the appellant, his agent or attorney, or to the clerk of the district court to which the appeal may be taken, on or before the second day of the term next following such appeal, and the case shall stand for argument or trial at such time, without further notice, any rule of the court, or law, to the contrary notwithstanding. If such appeal shall be taken after the second day of the term, the appeal shall not be heard, without consent of parties, until the next term. [C. L. 1876, ch. 71, p. 409, § 68.]

When justice to recall execution.

SEC. 3490. If upon an appeal being allowed, the appellant shall execute and file with the clerk of the district court an undertaking to stay execution, the justice shall recall any execution issued upon the judgment, and the costs of such execution shall abide the event of the suit on appeal. [C. L. 1876, ch. 71, p. 409, § 69. S. L. 1886, ch. 60, § 794.]

Docketing appeals—Order of trial—Parties.

SEC. 3491. Upon receiving such appeal papers from a justice, it shall be the duty of the clerk of the district court at any time, up to, and upon, the second day of the term, to docket the same without a note of issue, and appeals shall stand for trial in the order of the date upon which judgments were severally rendered; the plaintiff in the court below shall be plaintiff above. [C. L. 1876, ch. 71, p. 406, § 70.]

Proceedings on failure to perfect appeal.

SEC. 3492. The justice or appellant failing, on the second day of the term to which such case shall be appealed, to file such transcript and original papers, the appellee, without costs (if the fault be that of the justice), and by paying one dollar and fifty cents, (if the fault be that of the appellant), shall be entitled to a transcript of the docket and proceedings before the justice, and may at any time during the term, docket the case, and move its dismissal, or for judgment in his favor if he had judgment below, or the cause may stand for trial, or be otherwise dispensed with, as, in the opinion of the court, justice may require. [C. L. 1876, ch. 71, p. 409, § 71.]

Irregularity in taking appeal—Correction.

Sec. 3493. No appeal shall be dismissed because of any irregularity in taking the same, if the appellant shall supply the imperfections or irregularity before the cause is reached for argument or trial. [C. L. 1876, ch. 71, p. 410, § 72.]

Limitation upon right of appeal.

Sec. 3494. No appeal shall be allowed upon judgments by confession, or where the amount in controversy shall be less than five dollars. [C. L. 1876, ch. 71, p. 410, § 73.]

When appellant to pay costs and attorney fee.

Sec. 3495. If any person appealing from a judgment rendered in his favor, shall not recover a greater sum by ten dollars than the amount for which judgment was rendered, besides costs and the interest accruing thereon, where the trial is *de novo*, every such appellant shall pay the costs of such appeal, including a fee of ten dollars to defendant's attorney; and, in case the defendant shall demand a greater set-off, before the justice, than shall be allowed him in case he takes an appeal to the district court, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney. [C. L. 1876, ch. 71, p. 410, § 74.]

Liability of surety in undertaking.

Sec. 3496. When any appeal shall be dismissed or quashed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking, if there be an undertaking, shall be liable to the appellee for the whole amount of the debt, costs and damages, recovered against the appellant. [C. L. 1876, ch. 71, p. 410, § 75. S. L. 1886, ch. 60, § 794.]

Succeeding justice to make transcript.

Sec. 3497. When the term of office of a justice shall expire between the dates of judgment and the time limited for appeal, then it shall be the duty of his successor, after the delivery of the docket, to give the transcript, and do and perform all things required of his predecessor. [C. L. 1876, ch. 71, p. 410, § 76. S. L. 1886, ch. 60, § 794.]

Allowance of appeal may be enforced by attachment.

Sec. 3498. If a justice fail to allow an appeal in a case when the same ought to have been allowed, the district court, or judge thereof, on such fact satisfactorily appearing, may, by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him. [C. L. 1876, ch. 71, p. 410, § 77.]

Return of justice may be amended.

Sec. 3499. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment, compel him to amend the same. [C. L. 1876, ch. 71, p. 410 § 78.]

Judgment on affirmance of justice's decision.

Sec. 3500. In all cases of appeal from a justice's court, if the judgment of the justice be affirmed, or if, on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the undertaking, if there be an undertaking. [C. L. 1876, ch. 71, p. 410 § 79. S. L. 1886, ch. 60, § 794.]

Execution on such judgment, how collected.

Sec. 3501. If, upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of said principal to satisfy the same, such execution shall be enforced against the sureties in the undertaking, if one has been given, and the officer shall specifiy, on his return, by whom the money was paid, and the time thereof. [C. L. 1876, ch. 71, p. 410, § 80. S. L. 1886, ch. 60, § 794.]

Remedy of surety on payment of judgment.

SEC. 3502. After the return of an execution satisfied in whole or in part out of the security, such security shall be entitled to a judgment, on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum, from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence, upon the hearing of such motion, of the facts therein stated. [C. L. 1876, ch. 71, p. 410, § 81.]

Restitution on reversal of judgment.

SEC. 3503. If a judgment rendered before a justice be collected, and afterwards be revered by the court above, the court shall award restitution of the amount collected, with interest from the time of collection, and execution may issue therefor. [C. L. 1876, ch. 71, p. 411, § 82.]

SUB-DIVISION II. EXECUTIONS.

SECTION.

3504. How and when issued.
3505. What execution must contain.
3506. Indorsements on execution.
3507. Renewal of execution.
3508. Service upon garnishee.
3509. Officer to receive money on execution.
3510. Rights and remedies of bail.
3511. Execution against joint debtors.
3512. Plaintiff may sue surety on undertaking.

How and when issued.

SEC. 3504. Execution for the enforcement of a judgment for costs, or otherwise, before a justice of the peace, (except during the time it may be stayed as provided by law) may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon. [C. L. 1876, ch. 71, p. 411, § 83.]

What execution must contain.

SEC. 3505. The execution must be directed to any constable of the county and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment by stating the names of the parties and the name of the justice before whom, and of the county where, and the time when it was rendered, the amount of the judgment, and if less than the whole is due, the true amount thereon. It must require the constable substantially as follows:

First— It must direct the officer to collect the amount of the judgment out of the personal property of the debtor and pay the same to the party entitled thereto;

Second If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal, subject to execution within the jurisdiction, shall be exhausted before any property of the bail shall be taken in execution;

Third— It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof. [C. L. 1876, ch. 71, p. 411, § 84.]

Indorsements on execution.

SEC. 3506. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his execution, the amount of the debt or damages, and costs separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same. [C. L. 1876, ch. 71, p. 411, § 85.]

Renewal of execution.

Sec. 3507. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall continue the execution in full force, in all respects for thirty days, and no longer. An entry of such renewal shall be made in the docket of the justice. [C. L. 1876, ch. 71, p. 411, § 86.]

Service upon garnishee.

Sec. 3508. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer holding the execution, shall, upon the demand of the plaintiff, summon in writing, as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on a certain day, to be specified in said summons, or on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceedings shall be had thereon, before the justice, to final judgment and execution, as suits instituted by attachment in justice's court. [C. L. 1876, ch. 71, p. 412, § 87.]

Officer to receive money on execution.

Sec. 3509. The officer who shall hold an execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded. [C. L. 1876, ch. 71, p. 412, § 88.]

Rights and remedies of bail.

Sec. 3510. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this chapter, the original judgment shall remain good and valid in law, for the use of such bail, who at any time thereafter may sue out execution on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so indorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases. [C. L. 1876, ch. 71, p. 412, § 89.]

Execution against joint debtors.

Sec. 3511. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served the execution shall contain a direction to collect the amount of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. [S. L. 1876, ch. 71, p. 412, § 90.]

Plaintiff may sue surety on undertaking.

Sec. 3512. In all cases of surety or bail, the plaintiff may sue such surety upon his undertaking, if the amount thereof shall not be collected upon execution, as herein provided. [C. L. 1876, ch. 71, p. 412, § 91.]

SUB-DIVISION 12. STAY OF EXECUTION.

SECTION.
3513. Undertaking to stay execution.
3514. Time for which stay granted.
3515. Cases in which stay not allowed.
3516. Execution recalled when stay granted.
SECTION.
3517. When execution issued notwithstanding stay.
3518. Further undertaking may be given.

Undertaking to stay execution.

Sec. 3513. Any person against whom judgment may rendered under the provisions of this chapter, except as hereinafter otherwise provided, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party within ten days after the rendition of such judgment, with good and sufficient surety, being a resident property or freeholder of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest, and costs, that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety. [C. L. 1876, ch. 71, § 92.]

Time for which stay granted.

SEC. 3514. The stay of execution hereby authorized shall be granted as follows, namely:

First—On any judgment exceeding twenty-five, and under fifty dollars, the stay shall be for thirty days;

Second—On any judgment for fifty dollars, and up to, and including, the amount for which justices of the peace have jurisdiction, the stay shall be for sixty days. [C. L. 1876, ch. 71, § 93. S. L. 1886, ch. 90, § 1.]

Cases in which stay not allowed.

SEC. 3515. No stay of execution on judgments rendered in the following cases shall be allowed:

First—On judgments rendered against justices of the peace, for refusing to pay over money by them collected or received in their official capacity;

Second—On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity;

Third—On judgments against bail for the stay of execution;

Fourth—Where judgment is rendered in favor of bail who have been compelled by judgment to pay over money on account of their principal;

Fifth—On judgments obtained by constables on undertakings executed to them for the delivery of property. [C. L. 1876, ch. 71, § 94.]

Execution recalled when stay granted.

SEC. 3516. If the execution issued before the undertaking for stay, or that required in case of appeal be given, and such undertaking be given afterward and within the time allowed, the justice shall recall the execution. [C. L. 1876, ch. 71, § 95.]

When execution issued notwithstanding stay.

SEC. 3517. When any person who has become bail for stay of execution, shall remove before the expiration of such stay into any other county or state, the justice shall, on demand, issue execution against the goods and chattels of the defendant or other party against whom the original judgment was rendered; to be proceeded with as in other cases. When any surety for the stay of execution shall become apprehensive that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file affidavit of the fact before the justice on whose docket the judgment is entered, whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases; *Provided*, Such bail shall not thereby be discharged from liability, but may be proceeded against, after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid. [C. L. 1876, ch. 71, § 96.]

Further undertaking may be given.

SEC. 3518. If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution, and the person who has become surety shall first be proceeded against until it shall appear, by the return of the constable, that he, or she, has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given. [C. L. 1876, ch. 71, § 97.]

SUB-DIVISION 13. SALE ON EXECUTION.

SECTION.
3519. Notice of sale.
3520. Manner of conducting sale—Return.
SECTION.
3521. Officer not to purchase.

Notice of sale.

SEC. 3519. The officer having levied upon goods and chattels by virtue of an execution, shall, without delay, give public notice, by at least three advertisements put up at three public places in the precinct where the property is to be sold, of the time, and place, when and where, the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale. [C. L. 1876, ch. 71, § 103.]

Manner of conducting sale—Return.

SEC. 3520. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue, and sell to the highest bidder. In case there are no bidders, or if but a single bid be made, the sale shall be adjourned from time to time until a fair sale can be had. The officer shall, in all cases, return the execution, and have the money before the justice at the time of making such return. [C. L. 1876, ch. 71, § 104.]

Officer not to purchase.

SEC. 3521. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution; but every such sale shall be absolutely void. [C. L. 1876, ch. 71, § 105.]

SUB-DIVISION 14. REPLEVIN.

SECTION.
3522. Jurisdiction of justice.
3523. Affidavit for replevin.
3524. Summons in replevin.
3525. Service of writ.
3526. Undertaking required—Custody of property—Damages.
3527. Defendant may except to sureties—Justification.
3528. Jurisdiction of justice fixed by affidavit.
3529. Trial when plaintiff fails to prosecute.
3530. Finding for defendant and its requisites.
SECTION.
3531. Judgment for defendant to be in alternative.
3532. Finding for plaintiff—Damages—Judgment.
3533. Proceedings when property not taken.
3534. Authority of officer in executing writ.
3535. Proceedings when property concealed.
3536. Wrongful issuance of writ—Penalty.
3537. Liability of officers for wrongful delivery of property.

Jurisdiction of justices.

SEC. 3522. Justices of the peace shall have jurisdiction of actions for the recovery of specific personal property, not exceeding one hundred dollars in value, as herein provided. [C. L. 1876, ch. 71, § 106.]

Affidavit for replevin.

SEC. 3523. An action for this purpose shall not be brought until there is filed in the office of the justice an affidavit of the plaintiff, his agent or attorney, showing:

First—A description of the property claimed;

Second—That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property;

Third—That the property is wrongfully detained by the defendant;

Fourth—That it was not taken in execution on any order or judgment against said plaintiff, (or if so taken on execution, that it is by statute exempt from seizure), or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this sub-division, or any other mesne or final process issued against said plaintiff; and, *Fifth*—The actual value of the property. When several articles are claimed, the value of each article shall be stated as nearly as practicable. [C. L. 1876, ch. 71, § 107.]

Summons in replevin.

SEC. 3524. Upon such affidavit being executed and filed with the justice, he shall issue a summons as in other cases, but with a clause therein commanding the constable immediately to seize and take into his custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit. [C. L. 1876, ch. 71, § 108.]

Service of writ.

SEC. 3525. The constable shall execute the writ by taking the property therein mentioned; he shall also deliver a copy of the summons to the persons charged with the unlawful detention of property, or leave such a copy at his usual place of residence or business, and shall make return of the time and manner of service, and of any undertaking taken by him. [C. L. 1876, ch. 71, § 109.]

Undertaking required—Custody of property—Damages.

SEC. 3526. If, within five days after service of the copy of the summons, there is executed, by one or more sufficient sureties of the plaintiff, to be approved by the constable, an undertaking to the defendant, in not less than double the amount of the value of the property, as stated in the affidavit of the plaintiff, to the effect that the plaintiff will deliver the property to the defendant if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the constable shall deliver the property to the plaintiff. If such undertaking be not given within five days after the taking possession of the property, the constable shall deliver the property to the defendant, and the plaintiff, or the party making the affidavit, shall be liable for all costs made, or damage caused, in taking of such property; and if not then paid, judgment shall go against him for such costs, which may be collected like any other judgment, and the defendant may bring an action for damages as in other cases. [C. L. 1876, ch. 71, § 110.]

Defendant may except to sureties—Justification.

SEC. 3527. The defendant may, within twenty-four hours from the time the undertaking mentioned in the preceding section is given by plaintiff, give notice to the constable that he excepts to the sufficiency of the sureties. If he fails to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The constable shall be responsible for the sufficiency of the sureties until the objection to them is waived, as above provided for, until they justify; *Provided*, That the defendant or his attorney of record, shall be notified forthwith by the constable, of the giving of the undertaking, and the defendant shall not be deemed to have waived any objections he may have to the sureties if he be not so notified, but may except at any time before the trial of the action. [C. L. 1876, ch. 71, § 111. S. L. 1882, ch. 60, § 1.]

Jurisdiction of justice fixed by affidavit.

SEC. 3528. The affidavit of the plaintiff as to the value of the property, shall fix the jurisdiction of the justice, so far as such value is concerned; but the value of the property shall not be assessed against the defendant at a greater amount than that sworn to by the plaintiff in his affidavit. [C. L. 1876, ch. 71, § 112.]

Trial when plaintiff fails to prosecute.

SEC. 3529. If the property has been delivered to the plaintiff, and he fails to prosecute his action to final judgment, the justice shall, upon the return day, or upon the application of the defendant or his attorney, inquire into the right of property and the right of possession of the defendant to the property taken, by hearing evidence the same as in any other case, and if he shall be satisfied that said property was the property of the defendant at the commencement of the action, or if he shall be satisfied that the defendant was entitled to the possession at such time, he shall find accordingly, and shall further find the value of such property or the value of the possession thereof, and any damages for withholding the same as may be just and proper. [C. L. 1876, ch. 71, § 113.]

Finding for defendant and its requisites.

SEC. 3530. In all cases when the property has been delivered to the plaintiff, and upon the trial the justice shall find for the defendant, he shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit, and if he find either in his favor, he shall also find the value of the property or the value of the possession, and such damages for withholding said property as may be just and proper; *Provided*, That a jury trial may be had as in other cases. [C. L. 1876, ch. 71, § 114.]

Judgment for defendant to be in alternative.

SEC. 3531. The judgment in the cases mentioned in the two preceding sections shall be for the return of the property or the value thereof, or the value of the possession of the same, in case a return cannot be had, and the costs of the suit. [C. L. 1876, ch. 71, § 115.]

Finding for plaintiff—Judgment—Damages.

SEC. 3532. In all cases where property has been delivered to the plaintiff or taken from the defendant, where the justice or jury shall find for the plaintiff on the trial, or on inquiry concerning damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant. [C. L. 1876, ch. 71, § 116.]

Proceedings when property not taken.

SEC. 3533. When the property claimed has not been taken, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as may be right and proper. [C. L. 1876, ch. 71, § 117.]

Authority of officers in executing writ.

SEC. 3534. The constable in executing the writ, may break open any building or inclosure in which the property claimed, or any part thereof is concealed, but not until he has been refused an entrance into such building or inclosure, and the delivery of the property, after having demanded the same. [C. L. 1876, ch. 71, § 118.]

Proceedings when property concealed.

SEC. 3535. Whenever it shall be made to appear to the satisfaction of the justice, by the affidavit of the plaintiff, or otherwise, that the defendant, or any other person, knowingly conceals the property sought to be recovered, or, having control thereof, refuses to deliver the same to the officer, the justice may commit such defendant or other person, until he or they disclose where such property is, or deliver the same to the officer. [C. L. 1876, ch. 71, § 119.]

Wrongful issuance of writ—Penalty.

SEC. 3536. If any justice shall issue a writ to replevin property, as is provided by this sub-division, without the affidavit being filed in his office, as is provided in this sub-division, the same shall be set aside at his costs, and he shall be liable in damages to the party injured. [C. L. 1876, ch. 71, § 120.]

Liability of officer for wrongful delivery of property.

SEC. 3537. If the constable shall deliver the property to the plaintiff or his agent, or to the defendant, without receiving the undertaking from the plaintiff or defendant, as the case may be, as required by this sub-division, he and his bondsmen shall be liable to the defendant or plaintiff, as the case may be, for all damage sustained in consequence thereof. [C. L. 1876, ch. 71, § 121.]

SUB-DIVISION 15. TRIAL OF THE RIGHT OF PROPERTY.

SECTION.

3538. Notice and time of trial.
3539. Finding for claimant—Costs—Restoration of property.
3540. Finding against claimant—Judgment for costs.

Notice and time of trial.

SEC. 3538. When a constable shall levy on, or attach, property claimed by any person or persons, other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, or if no place of abode exists in said county, then by leaving notice at the justice's office, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property. [C. L. 1876, ch. 17 § 122.]

Finding for claimant—Costs—Restoration of property.

SEC. 3539. If, on trial, the justice or jury impaneled shall be satisfied from the proof, that the property, or any part thereof, belongs to the claimant or claimants, the jury shall render a verdict accordingly, such justice shall render judgment thereon against the party in whose favor such execution or attachment issued, for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or as much thereof as may have been found to belong to such claimant or claimants. [C. L. 1876, ch. 71, § 123.]

Finding against claimant—Judgment for costs.

SEC. 3540. But if the claimant or claimants fail to establish his or their right to such property or any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue executions therefor; and the constable shall not be liable to the claimant or claimants for the property so taken. [C. L. 1876, ch. 71, § 124.]

SUB-DIVISION 16. ATTACHMENT AND GARNISHMENT.

SECTION.

3541. Causes for attachment—Affidavit.
3542. Undertaking required.
3543. Requisites of writ.
3544. What property may be attached.
3545. Manner of executing writ.
3546. Service upon garnishee.
3547. Liability of garnishee.
3548. Examination of garnishee and of defendant.
3549. Inventory and appraisement.
3550. Sale of perishable property—Collection from garnishee.
3551. Proceedings when property claimed by third person.
3552. Satisfaction of judgment out of attached property.
3553. Collection of balance—Return of surplus.
3554. When plaintiff may prosecute undertaking.
3555. Return of property, etc., on judgment for defendant.
3556. Undertaking to discharge attachment.
3557. Condition of undertaking—Motion to discharge attachment.
3558. Evidence on motion to discharge.
3559. Discharge of writ.
3560. Return of officer.
3561. Answer of garnishee.
3562. Garnishee may pay over money—Costs.
3563. Failure to appear—Contempt.
3564. Court may order garnishee to pay over money.
3565. Action by plaintiff against garnishee.
3566. Final judgment against garnishee.
3567. Attachment writ and summons.
3568. *Pro rata* payment of different attachments
3569. Officer first attaching to have custody, etc.
3570. Notice of attachment by publication.
3571. Form of notice.
3572. Time and proof of publication.
3573. Proceeding upon judgment by default.

Causes for attachment—Affidavit.

SEC. 3541. The plaintiff shall have a writ of attachment against the property of the defendant in a civil action before a justice of the peace, at the time or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just; if the claim shall be founded upon contract, express or implied, the amount which the affiant believes the plaintiff ought to recover of the defendant, after allowing all just credits, counter-claims or set-offs, and the existence of some one or more of the following grounds of attachment:

First—When the defendant is a foreign corporation, or a non-resident of this territory; or,

Second—Has absconded, or is about to abscond, from this territory with intent to defraud his creditors; or,

Third—Has left the county of his residence to avoid the service of a summons; or,

Fourth—So conceals himself, that a summons cannot be served upon him; or,

Fifth—Is about to remove his property, or a part thereof, out of the jurisdiction of the court with intent to defraud his creditors; or,

Sixth—Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

Seventh—Has property, or rights in action, which he conceals; or,

Eighth—Has assigned, removed, or disposed of, or is about to dispose of his property, or a part thereof, with the intent to defraud his creditors; or,

Ninth—Fraudulently contracted the debt, or incurred the obligation for which suit is about to, be or has been brought. [C. L. 1876, ch. 71, § 125.]

Undertaking required.

SEC. 3542. Before issuing the writ, the justice shall require a written undertaking on part of the plaintiff, in a sum not less than fifty dollars in any case, and in double the amount claimed by the plaintiff, with sufficient surety, to the effect that, if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. [C. L. 1876, ch. 71, § 126.]

Requisites of writ.

SEC. 3543. The writ shall be directed to the sheriff or any constable of the county in which the writ is issued, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the demand of the plaintiff, the amount of which shall be stated in conformity with the affidavit, unless the defendant give him security by the undertaking of at least one sufficient surety in an amount sufficient to satisfy such demand, besides cost, in which case he shall receive such undertaking. [S. L. 1884, ch, 52, § 1.]

What property may be attached.

SEC. 3544. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this territory of such defendant not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment and execution. [C. L. 1876, ch. 71, § 128.]

Manner of executing writ.

SEC. 3545. The officer to whom the writ is directed and delivered, shall execute the same without delay, in the following manner, if the undertaking herein provided for be not given by the defendant:

First—Personal property capable of manual delivery shall be attached by taking it into custody;

Second—Stock or shares, or interest in stock or shares of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ;

Third—Debts and credits, and personal property, not capable of annual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, a copy of the writ, and a notice, and that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ. [C. L. 1876, ch. 71, § 129.]

Service upon garnishee.

SEC. 3546. Upon receiving information from the plaintiff, or his agent or attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the officer to whom the writ is directed and delivered shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ. [C. L. 1876, ch. 71, § 130. S. L. 1882, ch. 59, § 1.]

Liability of garnishee.

SEC. 3547. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them, of a copy of the writ and notice, as provided in the last two sections, shall, unless such property is delivered up or transferred, or such debts be paid to the officer to whom the writ is directed and delivered, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged or any judgment recovered by him be satisfied. [C. L. 1876, ch. 71, § 131.]

Examination of garnishee and defendant.

SEC. 3548. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the justice, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The justice may, after such examination, order personal property, capable of manual delivery, to be delivered to the officer having the writ on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof. [C. L. 1876, ch. 71, § 132.]

Inventory and appraisement.

SEC. 3549. The officer having the writ shall make a full inventory of the property attached, the value thereof to be ascertained by the oath of two disinterested property holders, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit; *Provided*, Said constable shall not be be required to appoint said valuers where but one article of property is attached, nor where the property attached is palpably and notoriously of less value than the amount claimed; nor when it shall consist of the debts and credits referred to in this section. And fifty cents shall be allowed to each valuer to be taxed as costs in the case. [C. L. 1876, ch. 71, § 133. S. L. 1879, ch. 48, § 2.]

Sale of perishable property—Collection from garnishee.

SEC. 3550. If any of the property attached be perishable, the officer, under an order therefor, made by the justice, shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him, to answer any judgment that may be recovered in the action, unless previously subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The officer's receipt shall be a sufficient discharge for the amount paid. [C. L. 1876, ch. 71, § 134.]

Proceeedings when property claimed by third party.

SEC. 3551. If any personal property attached, be claimed by a third person as his property, the officer, after receiving a written notice to that effect, shall deliver the notice to a justice of the peace, and on three days notice to the party in whose favor the execution was issued, the trial of right of property may be had as in other cases; *Provided*, That the officer may refuse to retain possession of property claimed by a third party, unless the party in whose favor the execution issued, shall indemnify the officer for holding the same. [C. L. 1876, ch 71, § 135.]

Satisfaction of judgment out of attached property.

SEC. 3552. If judgment be recovered by the plaintiff, the officer shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or a claimant, as herein provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

First—By paying the whole or his *pro rata* share to the plaintiff, the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

Second—If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under execution, so much of the property personal as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other sales on execution. [C. L. 1876, ch. 71, § 136.]

Collection of balance—Return of surplus.

SEC. 3553. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the officer shall proceed to collect such balance as upon execution in other cases. Whenever the judgment or judgments shall have been paid, the officer, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment. [C. L. 1876, ch. 71, § 137.]

When plaintiff may prosecute undertaking.

SEC. 3554. If the execution shall be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to the provisions of this sub-division, or he may proceed as in other cases upon the return of an execution. [C. L. 1876, ch. 71, § 138.]

Return of property, etc., on judgment for defendant.

SEC. 3555. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, and money collected by the officer, and all the property attached, remaining in the officer's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom, with costs to be taxed to the plaintiff. [C. L. 1876, ch. 71, § 139.]

Undertaking to discharge attachment.

SEC. 3556. Whenever the defendant's property shall be attached, he may, upon reasonable notice to the plaintiff, apply to the justice for an order to discharge the attachment, wholly or in part, upon the execution and filing of the undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts or credits attached, as the case may be. All the proceeds of sales and moneys collected by the officer and all the property attached remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff. [C. L. 1876, ch. 71, § 140.]

Condition of undertaking—Motion to discharge attachment.

SEC. 3557. On granting such order, the justice shall require an undertaking on behalf of the defendant, with at least one surety, resident and freeholder, householder or property holder in the county, to be approved by the justice, which shall be filed, to the effect, in case the value of the property or the amount of money, debts, or credits sought to be released, shall equal or exceed the amount claimed by the plaintiff, in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff, or to the effect, in case the value of the property, or the amount of money, debts, or credits sought to be released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the property or the amount of money, or debts or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of such property, money, debts or credits. The value of the property sought to be released, if disputed, shall be determined by the justice upon proof in a summary manner. The defendant may also, any time before the return day of the writ, or upon that, or an adjourned day, apply (upon reasonable notice to the plaintiff), to the justice before whom the action is brought, for the discharge of the attachment, on the ground that the writ was improperly issued, and for that purpose may traverse the affidavit upon which the attachment issued. [S. L. 1882, ch. 71, § 141.]

Evidence on motion to discharge.

SEC. 3558. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other evidence, in addition to those on which the writ of attachment was issued. [S. L. 1882, ch. 71, § 142.]

Discharge of writ.

SEC. 3559. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged, but the cause shall proceed to trial and judgment proceed as in cases commenced by summons. [S. L. 1882, ch. 71, § 143.]

Return of officer.

SEC. 3560. The officer shall return the writ of attachment with the summons, with a certificate of his proceedings indorsed thereon or attached thereto. [S. L. 1882, ch. 71, § 144.]

Answer of garnishee.

SEC. 3561. The garnishee shall appear before the justice, in accordance with the command of the summons, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose truly, the amount owing by him to the defendant, and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice. [C. L. 1876, ch. 71, § 145.]

Garnishee may pay over money—Costs.

SEC. 3562. A garnishee may pay the money owing to the defendant by him, to the officer having the writ of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him, and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs. [C. L. 1876, ch. 71, § 146.]

Failure to appear—Contempt.

SEC. 3563. If the garnishee do not appear and answer, the justice may proceed against him by attachment, as for a contempt. [C. L. 1876, ch. 71, § 147.]

Court may order garnishee to pay over money.

SEC. 3564. If the garnishee appear and answer, and it is discovered on his examination that, at the service of the writ of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property, and the payment of the amount owing by the garnishee into the court. [C. L. 1876, ch. 71, § 148.]

Action by plaintiff against garnishee.

SEC. 3565. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing into court, the plaintiff may proceed against him in an action in his own name as in other cases, and thereupon such proceeding may be had as in other actions, and judgment may be rendered in favor of the plaintiff for the amount of the property and the credits of every kind of the defendant, in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. [C. L. 1876, ch. 71, § 149.]

Final judgment against garnishee.

SEC. 3566. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys and credits of the defendant in his possession, and pay all moneys from him due as the court may order, the garnishee shall be discharged and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper. [C. L. 1876, ch. 71, § 150.]

Attachment writ and summons.

SEC. 3567. If the writ of attachment shall be issued at the commencement of the suit, it shall contain the substance of a summons, and no separate summons shall be necessary. If said writ shall be issued after the summons, the said writ shall be made returnable at the same time of the summons, and all pleadings and proceedings before the justice shall be the same as in other cases commenced by summons. [C. L. 1876, ch. 71, § 151.]

Pro rata payment of different attachments.

SEC. 3568. When several attachments are issued by the same justice, executed upon the same property, or the same persons are made garnishees at any time before a judgment shall be entered upon the first attachment, the property or debts, or sums of money attached shall be deemed to belong to all attaching creditors, and the proceeds, if not enough to pay all, shall be divided, after the costs shall be paid, *pro rata*, among such creditors in proportion to the amount of the claim of each, in court. [C. L. 1876, ch. 71, § 152.]

Officer first attaching to have custody, etc.

SEC. 3569. The officer first attaching shall be the custodian of the property attached or garnisheed, and paid over to him, and shall sell the property attached upon the various executions, or upon the order of the justice, and shall make return of his doings to the justice, and he shall pay over the proceeds, *pro rata* , as herein provided. [C. L. 1876, ch. 71, § 153.]

Notice of attachment by publication.

SEC. 3570. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action of the return writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, posted up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that, unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty nor more than sixty days from the date thereof, judgment will be rendered against him, and his property sold or appropriated to pay the same. [C. L. 1876, ch. 71, § 154.]

Form of notice.

SEC. 3571. The notice may be in the following form:

TERRITORY OF WYOMING, } ss.
———— County, }

To ———— ————: You are hereby notified that a writ of attachment has been issued against you, and your property attached, to secure the demand of ———— —— ————, amounting to ————. Now, unless you shall appear before J. P., a justice of the peace, in and for said county, at his office, on the ——— day of ————, A. D. 18—, at —— o'clock in the ——noon, judgment will be rendered against you, and your property sold or appropriated for the debt.

Dated this —— day of ————, A. D. 18—.

———— ————, Plaintiff.

[C. L. 1876, ch. 71, § 155.]

Time and proof of publication.

SEC. 3572. Such notice shall be posted up, or published, at least twenty days before the expiration of the time at which the party is required to appear, and the posting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case. [C. L. 1876, ch. 71, § 156.]

Proceedings upon judgment by default.

SEC. 3573. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment, as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant, with security to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case. [C. L. 1876, ch. 71, § 157.]

SUB-DIVISION 17. FORCIBLE ENTRY AND DETAINER.

SECTION.
3574. Jurisdiction of justice.
3575. Who liable to action.
3576. Notice to quit premises.
3577. Summons—Service and return.
3578. Proceedings when defendant fails to appear.
3579. Proceedings when defendant appears.
3580. Limitation on granting continuance.
3581. Trial by justice and judgment.
SECTION.
3582. Trial by jury—Verdict.
3583. Judgment upon verdict.
3584. Exceptions.
3585. Writ of restitution.
3586. Execution of writ.
3587. Return of writ on stay of proceedings.
3588. Appeals.
3589. This action no bar to ejectment.

Jurisdiction of justice.

SEC. 3574. Any justice within his proper county, shall have power to inquire, in the manner hereinafter directed as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into lands or tenements, unlawfully or by force hold the same; and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, then the said justice shall cause the party complaining to have restitution thereof. [C. L. 1876, ch. 71, § 158.]

Who liable to action.

SEC. 3575. Proceedings under this sub-division may be had in all cases against tenants holding over their terms, or after a failure to pay rent for three days after the same shall be due, in sales of real estate on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sale by executors, administrators, guardians, and on partition where any of the parties to the petition were in possession at the commencement of the suit, after such sales so made on execution, or otherwise, shall have been examined by the proper court, and the same is by such court adjudged legal; and in cases where the defendant is a settler or occupier of the lands or tenements without color of title, and to which the complainant has the right of possession; this section not to be construed as limiting the provisions of the first section of this sub-division. [C. L. 1876, ch. 71, § 159.]

Notice to quit premises.

SEC. 3576. It shall be the duty of the party desiring to commence an action under this sub-division, to notify the adverse party to leave the premises, for the possession of which the action is about to be brought; which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode or business, if he cannot be found. [C. L. 1876, ch. 71, § 160.]

Summons—Service and return.

SEC. 3577. The summons shall state the cause of the complaint against the defendant, and the time and place of trial, and shall be served and returned as in other cases. Such service shall be not less than three nor more than twelve days before the day of trial appointed by the justice. [C. L. 1876, ch. 71, § 161.]

Proceedings when defendant fails to appear.

SEC. 3578. If the defendant does not appear in accordance with the requisition of the summons, and it shall have been properly served, the justice shall try the cause as though he was present, but before he shall proceed, the plaintiff shall file a complaint in which shall be described the property, the possession of which is claimed, and the facts upon which he relies in order to recover the premises, which must be sustained by proof or the action must be dismissed. [C. L. 1876, ch. 71, § 162.]

Proceedings when defendant appears.

SEC. 3579. If the defendant shall appear, a like complaint shall be filed as provided in the last preceding section, and shall be admitted or denied in the answer of the defendant; both parties may be allowed to amend in furtherance of justice. If no answer be put in by the defendant, he shall not be allowed to offer evidence upon his part; he shall only be allowed to cross-examine the plaintiff's witnesses. [C. L. 1876, ch. 71, § 163.]

Limitation on granting continuance.

SEC. 3580. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety, to be approved by the justice, conditioned for the payment of the rent that may accrue, together with the costs, if judgment be rendered against the defendant. [C. L. 1876, ch. 71, § 164.]

Trial by justice and judgment.

SEC. 3581. If the suit be not continued, the place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises, and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable. [C. L. 1876, ch. 71, § 165.]

Trial by jury—Verdict.

SEC. 3582. If a jury be demanded by either party, the proceedings until the impaneling thereof, shall be, in all respects, as in other cases. If the jury find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty. If true in part, then a verdict setting forth the facts they find true. [C. L. 1876, ch. 71, § 166.]

Judgment upon verdict.

SEC. 3583. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts, authorizing the finding of such verdict, had been found to be true by himself. [C. L. 1876, ch. 71, § 167.]

Exceptions.

SEC. 3584. Exceptions to the opinion of the justice in cases under this sub-division upon questions of law and evidence, may be taken by either party, whether tried by jury or otherwise. [C. L. 1876, ch. 71, § 168.]

Writ of restitution.

SEC. 3585. When a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of restitution thereon. [C. L. 1876, ch. 71, § 169.]

Execution of writ.

SEC. 3586. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs and make return as upon other executions. [C. L. 1876, ch. 71, § 170.]

Return of writ on stay of proceedings.

SEC. 3587. If the officer shall receive a notice from the justice that the proceedings have been stayed on appeal, he shall immediately delay all further proceedings upon writ of restitution, and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon, and in case the officer shall be resisted in enforcing the writ, he may call in the aid of the county. [C. L. 1876, ch. 71, § 171.]

For manner of staying proceedings on appeal, see §§ 3142-3487.

Appeals.

SEC. 3588. Appeals shall be allowed as in other cases and under like conditions, when taken by the plaintiff, but when taken by the defendant, he shall enter into an undertaking with a further condition to pay double the amount specified in the lease, and all damages; if not under a lease, then conditioned to pay double the value of the use of the premises, and all damage. [C. L. 1876, ch. 71, § 172.]

This action no bar to ejectment.

SEC. 3589. The pendency of this action shall not be a bar to an action of ejectment. [C. L. 1876, ch. 71, § 173.]

SUB-DIVISION 18. CONTEMPT.

SECTION.
3590. When justice may punish.
3591. Limitation upon punishment.
3592. Defendant must be heard.
3593. Summary proceedings when defendant present.

SECTION.
3594. Requisites of warrant of commitment.
3595. Contempt by witness.
3596. Order committing witness.
3597. Adjournment until witness testifies.
3598. Disobedience of subpœna—Penalty.

When justice may punish.

SEC. 3590. In the following cases and no others, a justice of the peace may punish for contempt:

First—Persons guilty of disorderly, contemptuous and insolent behavior toward such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or impair the respect due to his authority;

Second—Persons guilty of any breach of peace, noise or disturbance, tending to interrupt the official proceedings of such justice;

Third—Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him. [C. L. 1876, ch. 71, § 174.]

Limitation upon punishment.

SEC. 3591. Punishment for contempt may be by fine not exceeeding twenty dollars, or by imprisonment in the county jail not exceeding two days, or by both such fine and imprisonment, in the discretion of the justice. [C. L. 1876, ch. 71, § 175.]

Defendant must be heard.

SEC. 3592. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defense, and, for that purpose, the justice may issue his warrant of attachment to bring the offender before him. [C. L. 1876, ch. 71, § 176.]

Summary proceedings when defendant present.

SEC. 3593. If the offender be present, he may be summarily arraigned by the justice and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. [C. L. 1876, ch. 71, § 177.]

Requisites of warrant of commitment.

SEC. 3594. The warrant of commitment in any case of contempt, shall set forth the particular circumstances of the offense, or it shall be void. [C. L. 1876, ch. 71, § 178.]

Contempt by witness.

SEC. 3595. Where any witness attending before a justice of the peace, in any cause, shall refuse to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county. [C. L. 1876, ch. 71, § 179.]

Order committing witness.

SEC. 3596. Such order shall specify the cause for which the same was issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he be sworn, or answer, as the case may be. [C. L. 1876, ch. 71, § 180.]

Adjournment until witness testifies.

SEC. 3597. The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case. [C. L. 1876, ch. 71, § 181.]

Disobedience of subpœna—Penalty.

SEC. 3598. If any person duly subpœnaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance, shall pay the costs thereof. [C. L. 1876, ch. 71, § 182.]

SUB-DIVISION 19. ARBITRATION.

SECTION.
3599. Selection of arbitrators—Trial—Award.
3600. Appeal from decision on motion to set aside award.
3601. Proceedings in district court when award set aside.
3602. Affirmance in district court.

Selection of arbitrators—Trial—Award.

SEC. 3599. Any civil cause pending before a justice, may be, by agreement of parties, submitted to the arbitration of three men, the parties each to select one arbitrator, and the two a third, who shall be sworn by the justice and proceed in a summary manner to hear the cause, either when so sworn or at some future day to be ordered by them. Either of said arbitrators shall have power to administer oaths to witnesses, issue subpœnas for witnesses and compel their attendance, with like powers of courts to punish for contempt. They shall make their awards in writing; any two concurring shall be the award of all; such award being reported to the justice, he shall enter judgment according to its terms, and such judgment shall conclude the rights of the parties, and no appeal shall be allowed; *Provided*, That when it shall be made satisfactorily to appear before the justice within ten days after the entry of judgment, that such award was obtained by fraud, corruption or any undue means, the justice shall set aside such award, and the case shall stand for trial as though no award had been made. [C. L. 1876, ch. 71, § 183.]

Appeal from decision on motion to set aside award.

SEC. 3600. If either party shall feel aggrieved by the decision of the justice upon the motion to set aside the award upon the grounds of fraud, corruption or undue means, an appeal may be taken as in other cases and under the same regulations. [C. L. 1876, ch. 71, § 184.]

Proceedings in district court when award set aside.

SEC. 3601. And if, on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption or other undue means, such court shall set aside the award and proceed to hear and determine the cause on the merits, as in other cases of appeal. [C. L. 1876, ch. 71, § 185.]

Affirmance in district court.

Sec. 3602. But if the court shall be of opinion that the award was not obtained by fraud, corruption or other undue means, it shall render judgment thereon for costs of suit, and award execution as in other cases. [C. L. 1876, ch. 71, § 186.]

SUB-DIVISION 20. GENERAL PROVISIONS.

SECTION.
3603. Execution for costs.
3604. Disposition of records, etc., on vacancy in justice's office.
3605. Unlawful detention of records—Citation.
3606. Delivery of records enforced by commitment
3607. Neglect to pay over money—Penalty.
3608. Justice's court to be public.
3609. Delivery of records, etc., to successor in office.
3610. Power of justice having lawful possession of records.
SECTION.
3611. Justice not to purchase judgment—Penalty.
3612. Imprisonment for debt and sale of exempt property forbidden.
3613. Constable's jurisdiction.
3614. Constable to execute process, etc.
3615. Powers of constable—Return of process.
3616. Indorsement on process.
3617. When return of "not found" permissible.
3618. Constable to arrest criminals, etc.
3619. Sureties shall justify.

Execution for costs.

Sec. 3603. Whenever, by reason of a dismissal, non-suit, or for any other cause; a judgment shall be rendered against either party for costs only, by a justice of the peace, he may at any time issue execution to enforce such judgment, in the same manner and with the same effect as in every other case. [C. L. 1876, ch. 71, § 187.]

Disposition of records, etc., on vacancy in justice's office.

Sec. 3604. In case any justice of the peace shall die. or his office shall in anywise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice that may have been elected shall receive such books and papers from such person having the same in his possession. [C. L. 1876, ch. 71, § 188.]

Unlawful detention of records—Citation.

Sec. 3605. If any books or papers required to be delivered to the nearest justice by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor, who shall have been elected, any books or papers, in either case the person entitled to receive the books and papers, may make complaint to the district judge of the district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he shall grant an order directing the person so refusing, to show cause before him, on a day to be mentioned in said order, why he should not be compelled to deliver the same. [C. L. 1876, ch. 71, § 189.]

Delivery of records enforced by commitment.

Sec. 3906. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order such judge shall proceed to inquire into the circumstances, and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall, by warrant, commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver the books and papers, or be otherwise discharged according to law. [C. L. 1876, ch. 71, § 190.]

Neglect to pay over money—Penalty.

Sec. 3607. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof, such justice shall forfeit his office. [C. L. 1876, ch. 71, § 191.]

Justice's court to be public.

SEC. 3608. The courts of justice of the peace shall be public, and every person may freely attend the same. [C. L. 1876, ch. 71, § 192.]

Delivery of record, etc., to successor in office.

SEC. 3609. It is the duty of every justice, upon the expiration of his term of office, to deposit with his successor, who may have been elected, his official docket, as well his own as those of his predecessor, which may be in his custody, together with all files and papers, laws and statutes pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, who may have been elected, there to be kept until a successor be elected and qualified, then to be delivered over to such successor on request, or if there shall be no justice in the county, then to deposit the docket and papers with the regtster of deeds of said county. [C. L. 1876, ch. 71, § 193.]

Power of justice having lawful possession of records.

SEC. 3610. The justice with whom the docket of another may be deposited, either during a vacancy, or as a successor, is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeal, or for stay of execution; to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had, or instituted, before him. [C. L. 1876, ch. 71, § 194.]

Justice not to purchase judgment—Penalty.

SEC. 3611. It shall not be lawful for any justice of the peace to purchase any judgment upon any docket in his possession; and for so doing, and for every such offense, such justice shall forfeit and pay a sum not more than fifty dollars nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed. Said money, when so collected and paid in, shall be for the support of the common schools in said county. [C. L. 1876, ch. 71, § 195.]

Imprisonment for debt and sale of exempt property forbidden.

SEC. 3612. Nothing in this chapter contained shall be so construed as to authorize the arrest or imprisonment of any citizen of this territory for debt, and nothing in this chapter shall apply to property, real or personal goods or chattels, rights or credits, interests or estates, exempt by law from levy, seizure, or sale under execution. [C. L. 1876, ch. 71, § 196.]

Constable's jurisdiction.

SEC. 3613. All constables shall be ministerial officers in justices courts in their respective counties in civil and criminal cases, and civil process may be executed by them throughout the county, and criminal process in any county of the territory. [C. L. 1876, ch. 71, § 197.]

Constable to execute process, etc.

SEC. 3614. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable. [C. L. 1876, ch. 71, § 198.]

Powers of constable—Return of process.

SEC. 3615. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or, if the judgment be docketed in the district court, appealed or stayed, upon which he has no execution, on notice, to return the execution, stating thereon such fact. [C. L. 1876, ch. 71, § 199.]

Indorsement on process.

SEC. 3616. It shall be the duty of every constable, on the receipt of any writ or other process, (subpœnas excepted), to note thereon the time of receiving the same; he shall also state, in his return on the same, the time and manner of executing it. [C. L. 1876, ch. 71, § 200.]

When return of "not found" permissible.

SEC. 3617. No constable shall make a return on any process of "not found" as to any defendant, unless he shall have been once, at least, to the usual place of residence of the defendant, if such defendant have any in the county. [C. L. 1876, ch. 71, § 201.]

Constable to arrest criminals, etc.

SEC. 3618. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice, all felons and disturbers and violators of the criminal laws of this territory; to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county. [C. L. 1876, ch. 71, § 202.]

Sureties shall justify.

SEC. 3619. In all cases arising under this chapter, whenever an undertaking or security is required to be given by either party, the securities offered shall each make an affidavit that he has a sufficient amount of property, over and above all exemptions and liabilities of any kind whatever. [C. L. 1876, ch. 71, § 203.

CHAPTER 3.

JURISDICTION AND PROCEDURE IN CRIMINAL CASES.

SECTION.
3620. Jurisdiction of justice.
3621. Criminal actions commenced by information.
3622. Requisites of information.
3623. Form of information.
3624. Warrant for arrest.
3625. Execution of warrant.
3626. Arraignment.
3627. Pleas by defendant.
3628. Trial by justice when jury not demanded.
3629. Affidavit for change of venue.
3630. Proceedings upon change of venue.
3631. Jury trial may be had if demanded.
3632. Manner of selecting jury.
3633. Venire for jury.
3634. Service of venire.
3635. Completing jury—Challenges.
3636. Challenge for cause.
3637. Proceedings when officer fails to return venire.
3638. Six jurors to constitute jury.
3639. Oath of jury.
3640. Trial.
3641. Retirement of jury—Oath of bailiff.
3642. Verdict of jury.
3643. Jury to be kept together.
SECTION.
3644. Second trial when jury disagree.
3645. Judgment on conviction.
3646. Commitment when fine not paid.
3647. Justice may sentence prisoner to hard labor, etc.
3648. Acquittal entitles defendant to discharge.
3649. When prosecuting witness liable for costs.
3650. Execution of judgment.
3651. Disposition of fines.
3652. Payment of fine after commitment.
3653. Appeal to district court.
3654. Defendant to be informed of his right to appeal.
3655. Undertaking on appeal.
3656. Qualifications of bail.
3657. By whom bail taken.
3658. Witnesses to be recognized and transcript filed.
3659. Trial in district court.
3660. When appeal may be dismissed.
3661. Enforcement of judgment in district court.
3662. Appeal to supreme court.
3663. Enforcement of judgment in supreme court.
3664. Malfeasance of justice—Penalty.

Jurisdiction of justice.

SEC. 3620. Justices of the peace in their respective counties have jurisdiction of, and may hear, try and determine all public offenses less than felony, except as otherwise provided by law, in which the punishment prescribed by law does not exceed a fine of one hundred dollars and imprisonment for six months in the county jail, on information or complaint, under oath, saving to the defendant the right of appeal to the district court. [S. L. 1877, p. 73, § 1.]

Criminal actions commenced by information.

SEC. 3621. Criminal actions for the commission of a public offense, may be commenced before a justice of the peace, by an information subscribed and sworn to, and filed with the justice. [C. L. 1876, ch. 71, p. 430, § 2.]

Requisites of information.

SEC. 3622. Such information must contain:

First—The name of the county and of the justice, where the information is filed;

Second—The names of the parties, if the defendants be known, and if not, then such names as may be given by the complainant;

Third—A statement of the acts constituting the offense, in ordinary and concise language, and the time and place of the commission of the offense, as near as may be. [C. L. 1876, ch. 71, p. 430, § 3.]

Form of information.

SEC. 3623. The information may be substantially in the following form:

Territory of Wyoming, } ss.
County of ——— }
Territory of Wyoming, }
vs. }
A. B., Defendant. }

Before justice (here insert the name of the justice.)

The defendant is accused of the crime or offense. For that the defendant on the——day of———, A. D. 18—, at the (here name the city, village or township), in the county aforesaid, (here state the act or omission constituting the offense, as in an indictment). [C. L. 1876, ch. 71, p. 431, § 4.]

Warrant for arrest.

SEC. 3624. Immediately upon the filing of such information, the justice may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary examination, and it may be served in like manner. [C. L. 1876, ch. 71, p. 431, § 5.]

Execution of warrant.

SEC. 3625. The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him without unnecessary delay before the justice who issued the same. [C. L. 1876, ch. 71, p. 431, § 6.]

Arraignment.

SEC. 3626. When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name and be required to plead. If he object that he is wrongfully named in the information, he must give his right name, and if he refuse to do so or does not object to the name used in the information, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection. [C. L. 1876, ch. 71, p. 431, § 7.]

Pleas by defendant.

SEC. 3627. The defendant may plead the same pleas as upon an indictment; his pleas may be either oral or written, and must be entered upon the docket of the justice. [C. L. 1876, ch. 71, p. 431, § 8.]

Trial by justice when jury not demanded.

SEC. 3628. Upon a plea other than a plea of "guilty," if the defendant do not demand a trial by jury, the justice must proceed to try the issue, unless a change of venue be applied for by the defendant. [C. L. 1876, ch. 71, p. 431, § 9.]

Affidavit for change of venue.

SEC. 3629. If a change of venue be applied for, an affidavit must be filed stating that the justice is prejudiced against the defendant, or is a near relation to the prosecutor upon the charge, or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affiant verily believes. [C. L. 1876, ch. 71, p. 431, § 10.]

Proceedings upon change of venue.

SEC. 3630. If such affidavit be filed, the change of venue must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to any justice in the county, who shall have been elected or appointed, against whom no such objection has been made, who shall proceed to try the case, unless a jury trial be demanded. No more than one change of venue in the same case shall be allowed. [C. L. 1876, ch. 71, p. 431, § 11.]

Jury trial may be had if demanded.

SEC. 3631. Before the justice has heard any testimony upon the trial, the defendant may demand a jury, which, in all cases, shall be allowed. [C. L. 1876, ch. 71, p. 432, § 12.]

Manner of selecting jury.

SEC. 3632. If a trial by jury be demanded, the justice shall direct any peace officer of the county to make a list in writing of the names of twelve inhabitants of the county having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names. [C. L. 1876, ch. 71, p, 432, § 13.]

Venire for jury.

SEC. 3633. In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing, and upon such names being struck out, the justice must issue a venire directed to any peace officer of the county, requiring him to summon the six persons whose names remain upon the list, to appear before such justice at the time and place named therein, to make a jury for the trial of the cause. [C. L. 1876, ch. 71, p. 432, § 14.]

Service of venire.

SEC. 3634. The officer to whom such venire is delivered must forthwith summon such jurors and return the venire to the justice within the time therein specified, naming the persons summoned and the manner of service. [C. L. 1876, ch. 71, p. 432, § 15.]

Completing jury—Challenges.

SEC. 3635. The names of the persons returned as jurors shall be called by the justice, and if upon any such call any of the persons so named do not appear, or are challenged and set aside for any cause, such further number must be summoned as will make a jury of six, after all legal challenges have been allowed, and each party shall be allowed two peremptory challenges. [C. L. 1876, ch. 71, p. 432, § 16.]

Challenge for cause.

SEC. 3636. The same challenge for cause may be taken by either party to any individual juror, as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed. [C. L. 1876, ch. 71, p. 432, § 17.]

Proceedings where officer fails to return venire.

SEC. 3637. If the officer by whom the venire is received, do not return it as required, he may be punished by the justice for a contempt, and the justice shall issue a new venire for the summoning of the same jurors, upon which the same proceedings shall be had as upon the one first issued. [C. L. 1876, ch. 71, p. 432, § 18.]

Six jurors to constitute jury.

SEC. 3638. Where six jurors appear and are accepted they shall constitute the jury. [C. L. 1876, ch. 71, p. 432, § 19.]

Oath of jury.

SEC. 3639. The justice must thereupon administer to them the following oath or affirmation: "You and each of you do swear, or you do solemnly affirm, (as the case may be), that you will well and truly try the issue between the Territory of Wyoming and the defendant, and a true verdict give according to the evidence." [C. L. 1876, ch. 71, p. 432, § 20.]

Trial.

SEC. 3640. After the jury are sworn, they must sit together, and hear the proofs and allegations of the parties, which must be delivered in public, after which they may either decide in open court or retire for consideration. [C. L. 1876, ch. 71, p. 432, § 21.]

Retirement of jury—Oath of bailiff.

SEC. 3641. If they do not immediately agree upon a verdict, they must retire with the sheriff of the county, or some constable, if either such are in attendance upon the court, or in their absence, with some person appointed by the justice, who shall be sworn to the following: "You do swear that you will well keep the jury together in some private place without food or drink, unless otherwise ordered by the court; that you will not allow any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed." [C. L. 1876, ch. 71, p. 432, § 22.]

Verdict of jury.

SEC. 3642. When the jury have agreed on their verdict, they must deliver it publicly to the justice, who shall enter it on his docket. [C. L. 1876, ch. 71, p. 433, § 23.]

Jury to be kept together.

SEC. 3643. The jury must be kept together after the case is submitted to them, until they have agreed upon and rendered their verdict, unless, for good cause, the justice sooner discharge them. [C. L. 1876, ch. 71, p. 433, § 24.]

Second trial when jury disagree.

SEC. 3644. If the jury be discharged as provided in the last section, the justice may proceed again to the trial in the same manner as upon the first trial and so on till a verdict is rendered. [C. L. 1876, ch. 71, p. 433, § 25.]

Judgment on conviction.

SEC. 3645. When the defendant pleads "guilty," or is convicted, either by the justice or by a jury, the justice shall render judgment thereon, of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable in rendering such judgment. [C. L. 1876, ch. 71, p. 433, § 26.]

Commitment when fine not paid.

SEC. 3646. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied. [C. L. 1876, ch. 71, p. 433, § 27.]

Justice may sentence prisoner to hard labor, etc.

SEC. 3647. In cases of vagrancy, and in cases of petit larceny, and in all other cases in which a justice has jurisdiction to hear and determine, when the party charged is found guilty, it shall be lawful for the justice to sentence such persons convicted to imprisonment at hard labor, or to fine them, or both; and in default of the payment of fine by such persons convicted, it shall be the duty of the sheriff of the proper county to set them to work on any public improvements which he may deem proper. The rate of compensation to be allowed by the county for such prisoners shall be one dollar a day for services rendered in payment of fines imposed and costs incurred, when not paid in cash; *Provided, however*, That any person convicted under this law of vagrancy, may, before judgment is rendered, release himself by giving to said justice a bond with good security, conditioned that he will, for the ensuing twelve months, be an honest man, engage in some honorable employment, and support himself and family, if he have one, without the aid and support of the county, so far as his natural abilities will enable him so to do. [C. L. 1876, ch. 117, § 3. S. L. 1886, ch. 51, § 2.]

Acquittal entitles defendant to discharge.

SEC. 3648. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged. [C. L. 1876, ch. 71, p. 433, § 28.]

When prosecuting witness liable for costs.

SEC. 3649. When the defendant is acquitted, the justice shall, if he is satisfied that the prosecution was malicious, or without probable cause, tax the costs against the prosecuting witness, and render judgment therefor. [C. L. 1876, ch. 71, p. 433 § 29.]

Execution of judgment.

SEC. 3650. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of the warrant under the hands of the justice, specifying the particulars of such judgment. [C. L. 1876, ch. 71, p. 433, § 30.]

Disposition of fines.

SEC. 3651. If a fine be imposed and paid before commitment, it shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof, for the use of the schools in the county. [C. L. 1876, ch. 71, p. 433, § 31.]

Payment of fine after commitment.

SEC. 3952. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, or to the justice by whom the commitment was made, but to no other person; who must in like manner, within thirty days after the receipt thereof, pay it into the county treasury for the use of the schools in the county. [C. L. 1876, ch. 71, p. 433, § 32.]

Appeal to district court.

SEC. 3653. The defendant may appeal from the judgment to the district court of the county in which the trial was had. [C. L. 1876, ch. 17, p. 433, § 33.]

Defendant to be informed of his right to appeal.

SEC. 3654. The justice rendering a judgment against the defendant, must inform him of his right to an appeal therefrom, and make an entry on his docket of the giving such information, and the defendant may thereupon take an appeal by giving notice orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice. [C. L. 1876, ch. 71, p. 433, § 34.]

Undertaking on appeal.

SEC. 3655. The justice must, thereupon, enter an order on his docket fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed, unless bail in that amount be put in by an undertaking substantially in the following form:

THE TERRITORY OF WYOMING, }
——— County, } ss.

A. B., having been convicted before C. D., a justice of the peace of said county, of the crime of (here designate it generally as in the information) by a judgment rendered on the ——— day of ——— A. D. 18—, and having appealed from said judgment to the district court of said county, we, A. B., as principal, and E. F., as surety, hereby undertake that the said A. B. will appear in the district court of the said county at the next term thereof, and abide the judgment of said court, and not depart without leave of the same, or that we will pay to the Territory of Wyoming the sum of ——— dollars (the amount of bail fixed.)

A. B.
E. F.

Acknowledged before, and accepted by me at ———, in the County of ———, this ——— day of ———, A. D. 18—.

C. D., Justice of the Peace.

[C. L., 1876, ch. 71, p. 434, § 35.]

Qualifications of bail.

SEC. 3656. The bail must possess the qualifications required in cases of appeal from the district court to the supreme court of the territory. [C. L. 1876, ch. 17, p. 434, § 36.]

By whom bail taken.

SEC. 3657. The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court, or the clerk thereof. [C. L. 1876, ch. 71, p. 434, § 37.]

Witnesses to be recognized and transcript filed.

SEC. 3658. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at a term at which it is returnable, and shall, as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the office of the clerk thereof, a certified copy of the entries on his docket, together with all the undertakings and papers in the case. [C. L. 1876, ch. 71, p. 434, § 38.]

Trial in district court.

SEC. 3659. The cause, when thus appealed, shall stand for trial anew in the district court, in the same manner that it should have been tried before the justice, and as nearly as practicable as an issue of fact upon an indictment, without regard to technical errors or defects, which have not prejudiced the substantial rights of either party, and the court has full power over the case, the justice of the peace, his docket entries, and his return, to administer the justice of the case according to law, and shall give judgment accordingly. [C. L. 1876, ch. 71, p. 434, § 39.]

When appeal may be dismissed.

SEC. 3660. No appeal from the judgment of a justice of the peace, in a criminal case, shall be dismissed, except in the following cases:

First—Where the supposed offense set out in the information shall not be an offense under the law;

Second—When there shall be no sufficient charge of an offense.

And when an appeal shall be dismissed, the defendant cannot be again tried for the same offense. [C. L. 1876, ch. 71, p. 434, § 40.]

Enforcement of judgment in district court.

SEC. 3661. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court, except as otherwise provided in the next preceding section. [C. L. 1876, ch. 71, p. 435, § 41.]

Appeal to supreme court.

SEC. 3662. Either party may appeal from the judgment of the district court to the supreme court, in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects as far as applicable. [C. L. 1876, ch. 71, p. 435, § 42.]

Enforcement of judgment in supreme court.

SEC. 3663. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken from a judgment prosecuted by indictment. [C. L. 1876, ch. 71, p. 435, § 43.]

Malfeasance of justice—Penalty.

SEC. 3664. Any justice of the peace failing in any of the requirements of this chapter, shall be adjudged to be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars. [C. L. 1876, ch. 71, p. 435, § 44.]

TITLE 42. PUBLIC BUILDINGS AND INSTITUTIONS.

CHAPTER 1. CAPITOL BUILDING AND UNIVERSITY.
CHAPTER 2. UNIVERSITY LANDS.
CHAPTER 3. BLIND, DEAF AND DUMB INSTITUTE.
CHAPTER 4. INSANE ASYLUM.

CHAPTER 1.

CAPITOL BUILDING AND UNIVERSITY.

SECTION.
3665. Authority to erect capitol building.
3666. Capitol building commission—Appointment, etc.
3667. Organization of commission—Rules and regulations—Record.
3668. Selection of site for building.
3669. Plans and specifications.
3670. Authority to contract for construction.
3671. Advertising for bids—Awarding contract.
3672. Contractors shall give bonds.
3673. Authority to issue bonds—Capitol building bonds.
3674. Compensation of commissioners.
3675. Authority to erect university building.
3676. University building commission—Appointment, etc.
3677. Selection o site for university.
3678. Powers and duties of commission.
3679. Authority to issue university building bonds.
3680. Terms of bonds.
3681. Execution and registration of bonds.
3682. Interest coupons.
3683. Preparation and sale of bonds.
3684. Bonds to be executed on written request.
3685. Issuance of bonds—Custody and disbursement of funds.
3686. Manner of issuing warrants.
3687. Annual tax levy to pay interest.
3688. Redemption of bonds and tax levy for same.
3689. Manner of levying and collecting tax.
SECTION.
3690. Compensation of territorial treasurer.
3691. Separate bonds required of treasurer.
3692. Time and place of paying bonds.
3693. Restrictions on members of the commission
3694. Time for completion of buildings.
3695. Commissions shall keep accounts and make reports.
3696. Compensation of university commission.
3697. Construction of this chapter.
3698. Creation and location of university.
3699. Objects of university.
3700. Board of trustees.
3701. Trustees may incorporate.
3702. Term of office of trustees.
3703. Appointment of trustees.
3704. Vacancies in board of trustees.
3705. Quorum and meetings of trustees.
3706. Powers of board of trustees.
3707. Faculty of university—Its powers.
3708. Member of faculty cannot be trustee.
3709. University not to be sectarian.
3710. Tuition for certain students to be free.
3711. Application of donations.
3712. Treasurer's bond.
3713. Duties of secretary of board.
3714. Duties of treasurer of board.
3715. Board of visitors.
3716. University income tax.
3717. Plans, etc., of university to be approved by trustees.
3718. Time of opening university.

Authority to erect capitol building.

SEC. 3665. A capitol building for the use of the territory shall be erected in the City of Cheyenne, the capital of the territory, at a cost not exceeding the sum of one hundred and fifty thousand dollars, in the manner hereinafter provided. [S. L. 1886, ch. 37, § 1.]

Capitol building commission—Appointment, etc.

SEC. 3666. It shall be the duty of the governor, during the present session of the legislative assembly, to nominate, and by and with the advice and consent of the legislative council, to appoint five residents of the territory as members of a commission to carry into effect the provisions of this chapter relating to the erection of said capitol building. In case a vacancy shall occur in such commission by death, resignation, removal from the territory or otherwise, such vacancy shall be filled by appointment, to be made by the remaining members of the commission. Before entering upon the discharge of his duties, each member of such commission shall take and subscribe an oath to faithfully, honestly and impartially perform the duties and obligations imposed upon him by the provisions herein contained, which oath shall be filed in the office of the secretary of the territory. [S. L. 1886, ch. 37, § 2.]

Organization of Commission—Rules and regulations—Record.

SEC. 3667. The commission named in the last preceding section shall be known as the "capitol building commission." It shall select its own chairman and secretary, and shall appoint one of its members or some other suitable person as superintendent of the construction of said capitol building, and said commission may make such rules and regulations for the transaction of its business and for the government of its appointees and employes, not inconsistent with the provisions of this chapter, as it may deem expedient and necessary. Three members of such "capitol building commission" shall constitute a quorum for the transaction of business, and a full record of all the proceedings of said commission shall be kept by the secretary thereof. [S. L. 1886, ch. 37, § 3.]

Selection of site for building.

SEC. 3668. The commission above named shall procure, by purchase, donation or otherwise, in the name of the Territory of Wyoming, a suitable site within the limits of said City of Cheyenne, upon which to erect the said capitol building, and shall thereupon proceed to contract for and superintend the erection of such building, in the manner herein provided. [S. L. 1886, ch. 37, § 4.]

Plans and specifications.

SEC. 3669. Before letting any contract in reference to said capitol building, plans and specifications for the same shall be prepared by some competent architect or architects, under the direction of such commission, which plans and specifications shall show the estimated cost of the proposed building, and when the same have been adopted by the commission, all contracts shall be made with reference to erecting such building according to such plans and specifications. [S. L. 1886, ch. 37, § 5.]

Authority to contract for construction.

SEC. 3670. Such commission shall be authorized to contract for the erection of such capitol building in one entire contract, or in portions, under several contracts with different contractors, as to it may seem for the best interest of the territory; *Provided*, That in awarding such contracts, preference shall be given to materials and labor of this territory. [S. L. 1886, ch. 37, § 6.]

Advertising for bids—Awarding contract.

SEC. 3671. After adopting such plans and specifications, the commission shall advertise for proposals for the erection of such capitol building, according to the said plans and specifications, for a period of thirty days, in three or more daily newspapers, published in the territory; and all contracts shall be awarded to the lowest responsible bidder, who will give the bond hereinafter required; *Provided*, That the commission may reject any and all bids as it may deem advisable, and may advertise again for proposals, for a period of not less than ten days. [S. L. 1886, ch. 37, § 7.]

Contractors shall give bonds.

SEC. 3672. It shall be the duty of said commission to exact from the person or persons to whom any contract shall be awarded under the preceding sections, a bond to the Territory of Wyoming in double the amount of the proposal of such person or persons, with two or more sufficient sureties, conditioned for the faithful performance of his or their contract, within a time to be fixed by the commission. [S. L. 1886, ch. 37, § 8.]

Authority to issue bonds—Capitol building bonds.

SEC. 3673. For the purpose of furnishing the money to be used in purchasing the site hereinbefore named, and in the erection, furnishing and equipment of said capitol building, the auditor and treasurer of the territory are hereby authorized to issue the bonds of the territory in any amount not exceeding one hundred and fifty thousand dollars, in the manner hereinafter named; *Provided*, That no more of said bonds shall be issued than are necessarily required to carry into effect the provisions of this chapter relating to the said capitol building; *And*, *Provided further*, That not more than twenty-five thousand dollars of such bonds shall be issued at any one time. The bonds provided for in this section shall be known as the "capitol building bonds." [S. L. 1886, ch. 37, § 9.]

Compensation of commissioners.

SEC. 3674. The members of such "capitol building commission" shall each receive for his services the sum of two hundred dollars, and the secretary and superintendent of such commission shall each receive a compensation, to be determined upon by such commission, all of which shall be paid as provided in section thirty-six hundred and eighty-five. [C. L. 1886, ch. 37, § 10.]

Authority to erect university building.

SEC. 3675. A university building, to be devoted to the purposes hereinafter named, shall be erected in or near the City of Laramie, in this territory, at a cost not exceeding the sum of fifty thousand dollars, in the manner hereinafter provided. [S. L. 1876, ch. 37, § 11.]

University building commission—Appointment, etc.

SEC. 3676. It shall be the duty of the governor, during the present session of the legislative assembly, to nominate, and, by and with the advice and consent of the legislative council, to appoint three residents of the City of Laramie, in this territory, as members of a commission, to carry into effect the provisions of this chapter, relating to the erection of said university building. In case a vacancy shall occur in said commission, by death, resignation, removal from the territory or otherwise, such vacancy shall be filled by appointment, to be made by the remaining members of the commission. Before entering upon the discharge of his duties, each member of such commission shall take and subscribe, and file in the office of the secretary of the territory, an oath similar to the one named in section thirty-six hundred and sixty-six. [S. L. 1886, ch. 37, § 12.]

Selection of site for university.

SEC. 3677. The commission named in the last preceding section shall be known as the "university building commission." It shall procure, by purchase, donation, or otherwise, in the name of the Territory of Wyoming, a suitable site within or near the limits of said City of Laramie, upon which to erect the said university building, and shall thereupon proceed to contract for, and superintend the erection of such building, in the manner herein provided. [S. L. 1886, ch. 37, § 13.].

Powers and duties of commission.

SEC. 3678. The said "university building commission" shall be under the same restrictions and shall have the same authority, in relation to the performance of its duties, as are hereinbefore placed upon, and granted to, the said "capitol building commission." [S. L. 1886, ch. 37, § 14.]

Authority to issue university building bonds.

SEC. 3679. For the purpose of furnishing the money to be used in purchasing the site for, and in the erection, furnishing and equipment of the said university building, the auditor and treasurer of the territory are hereby authorized to issue the bonds of the territory in any amount not exceeding fifty thousand dollars, in the manner hereinafter named; *Provided*, That no more of said bonds shall be issued than are necessarily required to carry into effect the provisions of this chapter relating to the erection of said university building; *And*, *provided further*, That not more than ten thousand dollars of such bonds shall be issued at any one time. The bonds provided for in this section shall be known as the "university building bonds." [S. L. 1886, ch. 37, § 15.]

Terms of bonds.

SEC. 3680. The bonds named in this chapter shall be issued in amounts of one thousand dollars each, and shall be made payable in twenty-five years from the date of their issuance, or sooner, as hereinafter provided in section thirty-six hundred and eighty-eight, and shall bear interest at the rate of six per centum per annum, payable on the first day of January in each year. [S. L. 1886, ch. 37, § 16.]

Execution and registration of bonds.

SEC. 3681. Such bonds shall be signed by the territorial auditor and countersigned by the territorial treasurer, and shall have affixed thereto the official seals of such auditor and treasurer, and when signed, sealed and issued, as herein provided, shall be entitled to full faith and credit as the binding obligations of this territory. The bonds named in sections thirty-six hundred and seventy-three and thirty-six hundred and seventy-nine, shall each be separately numbered from one consecutively upwards and shall be separately registered in a book kept for that purpose by the territorial treasurer, in the order in which they are issued, and each bond shall state upon its face the amount for which the same is issued, to whom issued, for what purpose issued and the date of issuance. [S. L. 1886, ch. 37, § 17.]

Interest coupons.

SEC. 3682. Said bonds shall have coupons attached thereto, representing the interest to be paid, which coupons shall be signed by the auditor and treasurer, and shall be severally numbered from one to twenty-five inclusive, each bearing the number of the bond to which it is attached. The said coupons may be detached from the bonds to which they belong by the holder thereof, for the purpose of presentment for payment. [S. L. 1886, ch. 37, § 18.]

Preparation and sale of bonds.

SEC. 3683. The bonds herein authorized shall be prepared and engraved under the direction of a board composed of the territorial treasurer, and the chairmen of the two commissions herein named; and the said board is hereby authorized to negotiate a sale of said bonds for cash on the most advantageous terms it can obtain for the territory; *Provided*, That such bonds shall not be sold for less than their par value. [S. L. 1886, ch. 37, § 19.]

Bonds to be executed on written request.

SEC. 3684. Said bonds shall be signed and sealed in parcels, not exceeding in amount the provisions of sections thirty-six hundred and seventy-three and thirty-six hundred and seventy-nine, respectively, upon the written request of a majority of the members of the respective commissions, which request shall state that the same are needed for the purposes for which the same are authorized, and shall state the price at which the same have been negotiated. [S. L. 1886, ch. 37, § 20.]

Issuance of bonds—Custody and disbursement of funds.

SEC. 3685. When any of said bonds are so signed and sealed, they shall be placed in the custody of the territorial treasurer, and shall be charged to said treasurer by the territorial auditor, at the price at which the same have been negotiated, and shall be delivered and issued by the territorial treasurer to the purchaser or purchasers thereof,upon the receipt of the purchase money therefor; and the money derived from the sale of such bonds shall be kept in separate funds, to be known respectively as the "capitol building fund," and the "university building fund," and shall be paid out by the territorial treasurer upon warrants issued by the territorial auditor, as provided in the next succeeding section. [S. L. 1886, ch. 37, § 21.]

Manner of issuing warrants.

SEC. 3686. For any indebtedness or expense incurred by either of said commissions in carrying out the provisions of this chapter, the territorial auditor shall issue to the person or persons to whom such money is due and payable, his warrant or warrants on the territorial treasurer, upon a certificate signed by a majority of the members of the commission incurring such indebtedness or expense, which certificate shall state the items of such indebtedness or expense; that the same are just, were necessarily incurred, and have not been paid. The warrants so issued shall state out of which of the two funds the same are to be paid. [S. L. 1886, ch. 37, § 22.]

Annual tax levy to pay interest.

SEC. 3687. When any of said bonds shall have been issued as herein provided, it shall, in each year thereafter, be the duty of the territorial board of equalization, at the time of making the annual assessment for territorial purposes, to direct the board of the county commissioners of the several counties, to levy, upon all taxable property, a tax sufficient to pay the accruing interest on said bonds for that year. [S. L. 1886, ch. 37, § 23.]

Redemption of bonds and tax levy for same.

SEC. 3688. Each year after the expiration of fifteen years from the time of issuing the first of said bonds, one-tenth of all the bonds which shall have been so issued, shall be redeemed, beginning with number one and proceding consecutively upwards, by paying the interest and principal due thereon, and by cancelling the same; and each year after the expiration of the fifteen years aforesaid, it shall be the duty of the said territorial board of equalization, at the time of making the said annual assessment, to direct the board of the county commissioners of the several counties, to levy, upon all taxable property, a tax sufficient to pay the accruing interest on said bonds for that year, and to redeem one-tenth of the said bonds as aforesaid. [S. L. 1886, ch. 37, § 24.]

Manner of levying and collecting tax.

SEC. 3689. The tax named in the last two preceding sections shall be known as the "territorial bond tax," and shall be levied, collected and paid to the territorial treasurer in the manner provided by law for the levy, collection and payment of other territorial taxes, and shall be paid out of the territorial treasury only for the purposes named in said sections. Such tax shall be a special tax, and shall be so levied and collected, in addition to any taxes otherwise provided for by law. [S. L. 1886, ch. 37, § 25.]

Compensation of territorial treasurer.

SEC. 3690. The territorial treasurer shall have the custody of the several funds named in this chapter, until the same are paid outas herein before provided; and he shall be entitled to receive one-third of one per centum commission thereon, for the safe keeping and accounting for the same; *Provided*, That he shall not be entitled to any commission on any of said funds turned over to his successor in office. [S. L. 1886, ch. 37, §26.]

Separate bond required of treasurer.

SEC. 3691. The territorial treasurer shall be required to give a separate bond to the Territory of Wyoming in such an amount, and with such sureties, as shall be approved by the governor, conditioned for the faithful accounting of all moneys coming into his hands under the provisions of this chapter. [S. L. 1886, ch. 37, § 27.]

Time and place of paying bonds.

SEC. 3692. The said bonds, and the coupons thereof, shall be payable, as hereinbefore provided, at the territorial treasurer's office, on the first day of January in each year; and when any of such bonds or coupons are paid, the same shall be retained by the treasurer, and cancelled by cutting the word "paid" therein. If any of said bonds are not presented for payment at the time when the same are payable by the provisions of this chapter, the same shall cease to draw interest thereafter. [S. L. 1886, ch. 37, § 28.]

Restrictions on members of the commissions.

SEC. 3693. No member of either of said commissions shall be or become interested in any contract entered into or made under the provisions of this chapter, nor be or become a surety on any bond, conditioned for the performance of any such contract, nor be or become the agent of any contractor, with either of such commissions. [S. L. 1886, ch. 37, § 29.]

Time for completion of buildings.

SEC. 3694. Each of the commissions herein provided for shall enter upon the performance of its duties at the earliest time practicable, and shall cause its building to be completed within eighteen months from the passage of this chapter, or as soon thereafter as the same can be done. [S. L. 1886, ch. 37, § 30.]

Commissions shall keep accounts and make reports.

SEC. 3695. Each of such commissions shall keep a strict and accurate account of all contracts, disbursements and transactions made by it, and upon the completion of its work, shall make a full report thereof in writing to the governor, and shall file in the office of the secretary of the territory the record of its proceedings and all books and papers relating to the erection of its building and to the management and superintendence thereof; it shall also submit to the next legislative assembly of the territory a duplicate of its said report to the governor. [S. L. 1886, ch. 37, § 31.]

Compensation of university commission.

SEC. 3696. The members of the "university building commission" shall each receive for his services the sum of two hundred dollars, and the secretary and superintendent of said commission shall each receive a compensation to be determined upon by said commission, all of which shall be paid as provided in section thirty-six hundred and eighty-five. [S. L. 1886, ch. 37, § 32.]

Construction of this chapter.

SEC. 3697. Nothing in any act relating to territorial revenue, or in any other act now in force, shall be construed to affect or impede the provisions of this chapter. [S. L. 1886, ch. 37, § 33.]

Creation and location of university.

SEC. 3698. There shall be established in this territory an institution under the name and style of "The University of Wyoming," to be located in or near the City of Laramie, in the manner hereinafter named. [S. L. 1886, ch. 37, § 34.]

Objects of university.

SEC. 3699. The objects of such university shall be to provide an efficient means of imparting to young men and young women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. [S. L. 1886, ch. 34, § 35.]

Board of trustees.

SEC. 3700. The government of the university shall be vested in a board of seven trustees, three of whom shall at all times be residents of the City of Laramie aforesaid. [S. L. 1886, ch. 37, § 36.]

Trustees may incorporate.

SEC. 3701. Such board of trustees shall be authorized, whenever it deems the same expedient, to incorporate under the general corporation laws of this territory, and may thereby acquire, in addition to the powers herein named, the general powers of a body politic and corporate. [S. L. 1886, ch. 37, § 37.]

Terms of office of trustees.

SEC. 3702. The term of office of such trustees shall be four years, except as provided in the next two succeeding sections. [S. L. 1886, ch. 37, § 38.]

Appointment of trustees.

SEC. 3703. It shall be the duty of the governor, during the present session of the legislative assembly, to nominate, and by and with the advice and consent, of the legislative council, to appoint seven residents of the territory as members of said board of trustees, three of whom shall serve for two years, and two of whom shall serve for four years, and two of whom shall serve for six years, and hereafter, during the session of each succeeding legislative assembly, the governor shall nominate, and by and with the advice and consent of the legislative council appoint successors to such of said trustees whose term of office shall have expired or will expire before the next session of the legislative assembly. [S. L. 1886, ch. 37, § 39.]

Vacancies in board of trustees.

SEC. 3704. Any vacancy in the said board of trustees, caused by death, resignation, removal from the territory or otherwise, shall be filled by appointment, to be made by the governor, which appointment shall continue until the next session of the legislative assembly, and no longer. [S. L. 1886, ch. 37, § 40.]

Quorum and meetings of trustees.

SEC. 3705. A majority of the members of such board of trustees shall constitute a quorum for the transaction of business, and said board shall hold regular meetings on the first Mondays of January, April, July and October of each year. [S. L. 1886, ch. 37, § 41.]

Powers of board of trustees.

SEC. 3706. The said board shall have power:

First—To elect one of its members president of such board;

Second—To appoint a secretary and treasurer from among the members of such board, and such other officers as it may deem necessary for the good order and government of said university, and to prescribe their duties and fix their compensation;

Third—To provide by resolution or otherwise for special meetings of such board;

Fourth—To possess and use for the benefit of the university, the university building and site hereinbefore named, when said building shall be completed;

Fifth—To take and hold for the benefit of the university, any real or personal estate, and to dispose of the same in such manner as it may deem most conducive to the interests of the university;

Sixth—To expend the income placed under its control by the provisions of this chapter, and such other funds as it may receive, in such manner as shall best promote the interest and prosperity of the university;

Seventh—To elect a president and such professors, tutors, and other officers of the faculty of such university as shall be necessary, who shall hold their offices during the pleasure of the trustees;

Eighth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers;

Ninth—To prescribe the course of study and discipline to be observed in the university and the price of tuition;

Tenth—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred. [S. L. 1886, ch. 37, § 42.]

Faculty of university—Its powers.

SEC. 3707. The president, professors and tutors of such university shall be styled the faculty, and shall have power:

First—To enforce the rules and regulations adopted by said trustees for the government of the students;

Second—To reward and censure students as they may deserve, and to suspend those who continue refractory, until a determination of the board of trustees can be had thereon;

Third—To grant and confer, by and with the consent and approbation of the trustees, such literary honors and degrees as are usually granted and conferred in other colleges and universities in the United States, and in testimony thereof to give suitable diplomas, under the seal of the territory and signatures of the faculty. [S. L. 1886, ch. 37, § 43.]

Members of faculty cannot be trustees.

Sec. 3708. No member of the faculty of such university shall, while acting in that capacity, be a trustee. [S. L. 1886, ch. 37, § 44.]

University not to be sectarian.

Sec. 3709. No religious qualification or test shall be required of any student, trustee, president, professor, tutor or officer of such university, or as a condition for admission for any privilege in the same; and no sectarian tenets or principles shall be taught, instructed or inculcated at said university by any president, professor or tutor therein. [S. L. 1886, ch. 37, § 45.]

Tutition for certain students to be free.

Sec. 3710. The trustees shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of the county commissioners therein. [S. L. 1886, ch. 37, § 46.]

Application of donations.

Sec. 3711. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said university, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such shall have been connected therewith. [S. L. 1886, ch. 37, § 47.]

Treasurer's bond.

Sec. 3712. The said trustees shall require their treasurer to give a bond, with sureties to be approved by them, in double the sum likely to come into his hands. [S. L. 1886, ch. 37, § 48.]

Duties of secretary of board.

Sec. 3713. The secretary of the board of trustees shall keep a true record of the proceedings of said board, and make and certify to copies thereof. He shall also keep an account of the students in said university, according to their classes, showing their respective ages and places of residence. [S. L. 1886, ch. 37, § 49.]

Duties of treasurer of board.

Sec. 3714. The treasurer of said board of trustees shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof; he shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary; he shall keep accurate accounts with all persons having dealings with such university; shall collect the tuition fees due the same, and shall submit a full and proper statement of the finances of the university and of his receipts and disbursements, at each regular meeting of the board of trustees, and at such other times as said board may direct. [S. L. 1886, ch. 37, § 50.]

Board of visitors.

Sec. 3715. A board of visitors, to consist of three persons, shall be appointed biennially, at the commencement of the collegiate year, by the governor of the territory. It shall be their duty to make a personal examination into the state and condition of the university, and all its affairs, twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the legislative assembly at its next session. Such visitors shall receive no compensation for their services. [S. L. 1886, ch. 37, § 51.]

University income tax.

SEC. 3716. To provide an income for such university there shall be assessed upon all taxable property of the territory, in each year after the passage of this chapter, a tax of one-fourth of a mill on each and every dollar of the assessed valuation of such property, which tax shall be levied, collected and paid to the territorial treasurer in the manner provided by law for the levy, collection and payment of other territorial taxes. Said tax, when so paid to the territorial treasurer, shall be paid to the treasurer of said board of trustees upon the warrant of the territorial auditor, to be issued upon request of said board of trustees. [S. L. 1886, ch. 37, § 52.]

Plans, etc., of university to be approved by trustees.

SEC. 3717. Before the plans and specifications for the university building hereinbefore named shall be adopted by the "university building commission," the same shall be submitted to and approved by said board of trustees. [S. L. 1886, ch. 37, § 53.]

Time of opening university.

SEC. 3718. The said university shall be opened for the admission of students at a time to be determined by said board of trustees. [S. L. 1886, ch. 37, § 54.]

CHAPTER 2.

UNIVERSITY LANDS.

SECTION.
3719. Appointment of commissioner.
3720. Vacancy in office of commissioner.
3721. Duty of commissioner.

SECTION.
3722. Fees of commissioner.
3723. Appropriation.
3724. Application of appropriation.

Appointment of commissioner.

SEC. 3719. It shall be the duty of the governor, during the present session of the legislature, to nominate and by and with the consent of the legislative council, to appoint some suitable person, as a commissioner to select and locate, under the direction of the secretary of the interior, and with the approval of the President of the United States, the lands granted to the Territory of Wyoming by an act of congress entitled, "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," approved February eighteenth, eighteen hundred and eighty-one. [S. L. 1886, ch. 81, § 1.]

Vacancy in office of commissioner.

SEC. 3720. In case the office of said commissioner shall become vacant by death, resignation or otherwise, before the duties of said commissioner, as prescribed in this chapter, shall have been fully performed, such vacancy shall be filled by appointment by the governor. [S. L. 1886, ch. 81, § 2.]

Duty of commissioner.

SEC. 3721. It shall be the duty of the said commissioner to select and locate the said lands, under the direction of the secretary of the interior, and with the approval of the President of the United States, within twenty months after the passage of this chapter, and when the same shall have been completed the said commissioner shall make a full report thereof in writing to the governor. [S. L. 1886, ch. 81, § 3.]

Fees of commissioner.

SEC. 3722. The said commissioner shall receive for his services the sum of five dollars per day during the time he is actually employed in performing the duties named in this chapter, and also all the necessary and reasonable expenses incurred by him in the performance of such duties; and the auditor shall draw warrants upon the treasurer therefor, upon vouchers signed and sworn to by said commissioner and approved by the governor. [S. L. 1886, ch. 81, § 4.]

Appropriation.

Sec. 3723. The sum of fifteen hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of the territorial treasury from any funds not otherwise appropriated, to pay said commissioner, and to defray the expenses of carrying into effect the provisions of this chapter. [S. L. 1886, ch. 81, § 5.]

Application of appropriations.

Sec. 3724. In case the secretary of the interior shall not consent to the location of the lands named in this chapter, by the commissioner appointed by the governor, for that purpose, and in case the secretary of the interior shall appoint another person to locate said lands, the funds appropriated in the last preceding section may be expended in the manner herein provided to the same extent as if the person appointed by the secretary of the interior had been the appointee of the governor under this chapter. [S. L. 1886, ch. 113, § 38.]

CHAPTER 3.

BLIND, DEAF AND DUMB INSTITUTE.

SECTION.
3725. Creation of institute—Limitation.
3726. Board of trustees.
3727. Organization of board.
3728. Oath of trustees—Duties of president and secretary.
3729. Powers of trustees.
3730. Expenses to be confined to appropriation.
3731. Payment of expenses—Compensation of trustees.
SECTION.
3732. Inmates, not residents of territory.
3733. Who admitted to institute.
3734. Assessor to report names of afflicted.
3735. Pupils to be properly clothed—Payment of expense.
3736. Officers and their duties.
3737. Duties of matron.
3738. President to make annual report to governor.

Creation of institute—Limitation.

Sec. 3725. There shall be located and permanently maintained, at the City of Cheyenne, in the County of Laramie, an institute for the support and education of the blind, deaf and dumb; *Provided*, That no institute shall be opened until there are twelve pupils ready and that will enter said school, and when the number of pupils shall fall below the number of eight, then said institute shall close. [S. L. 1886, ch. 77, § 1.]

Board of trustees.

Sec. 3726. Said institute shall be under the supervision of a board of trustees, consisting of three persons, who shall be appointed by the governor and confirmed by the territorial council; said trustees shall hold office for two years, and until their successors are appointed and qualified, subject to removal for cause. When a vacancy occurs in said board, by death, resignation or removal, and if the council shall not be in session, the governor shall have power to fill such vacancy by appointment. [S. L. 1886, ch. 77, § 2.]

Organization of board.

Sec. 3727. Said trustees shall meet at the City of Cheyenne, within one month from the date of their appointment, for the purpose of organization. They shall choose one of their number for president, and another for secretary of said board. In the absence of the president, a president *pro tempore* may be named to perform the duties of president. Two of said trustees shall constitute a quorum for the transaction of business. [S. L. 1886, ch. 77, § 3.]

Oath of trustees—Duties of president and secretary.

Sec. 3728. Each member of said board shall, before entering upon his duties, take and subscribe an oath to support the constitution of the United States, the organic act of this territory, and that he will faithfully discharge the duties required of him by the provisions of this chapter. The president shall preside at all meetings of the board when present, and sign all certificates of indebtedness, bills and all papers approved or allowed by said board. The secretary shall keep a correct record of the proceedings of the board, and have charge of, in trust for the institute, all papers, records and accounts of the same. [S. L. 1886, ch. 77, § 4.]

Powers of trustees.

SEC. 3729. Said board shall have the general supervision of the institute, adopt rules for the government thereof, employ officers, teachers and servants, provide necessaries for the institute, and perform all other acts necessary to render it efficient and to carry out the purposes of its establishment. [S. L. 1886, ch. 77, § 5.]

Expenses to be confined to appropriation.

SEC. 3730. The board shall not create any indebtedness against the institute exceeding the amount appropriated by the legislature for the use thereof. [S. L. 1886, ch. 77, § 6.]

Payment of expenses—Compensation of trustees.

SEC. 3731. All indebtedness incurred by said board in carrying out the provisions of this chapter, together with the compensation of five dollars per day for the time actually employed in such services, and also the necessary travelling expenses of each, shall be paid out of the territorial treasury upon a certificate of the president of the board, stating the items of such indebtedness, expenses and compensation, and that the same is just and necessary, according to the provisions of this chapter, and upon the presentation of said certificate to the auditor of the territory, he shall issue his warrant or warrants to the party or parties to whom such money is due and payable, and the territorial treasurer shall pay such warrants out of any moneys appropriated for that purpose. But the auditor shall not issue any warrant without an itemized account properly sworn to, accompanying the certificate of the president of the board. Said accounts may be sworn to before the president of said board, who is hereby authorized and empowered to administer oaths for that purpose. [S. L. 1886, ch. 77, § 7.]

Inmates, not residents of territory.

SEC. 3732. Persons not residents of this territory, of suitable age and capacity, shall be entitled to an education in said institute on paying to the territorial treasurer the sum of three hundred dollars per annum in advance. [S. L. 1886, ch. 77, § 8.]

Who admitted to institute.

SEC. 3733. Every blind, deaf or dumb person, who is a resident of this territory, of suitable age and capacity, shall be entitled to receive an education in said institute at the expense of the territory. [S. L. 1886, ch. 77, § 9.]

Assessor to report names of afflicted.

SEC. 3734. The county assessor of each county shall annually report to the county clerk the names, ages, postoffice address and names of parents or guardians, of every blind, deaf or dumb person between the ages of seven and twenty-one years, residing in his county, including all such persons as may be too deaf to acquire an education in the common schools. The county clerk shall, on or before the first day of August in each year, send a list containing the names, ages and residences of all such persons to the principal of the institute. [S. L. 1886, ch. 77, § 10.]

Pupils to be properly clothed—Payment of expenses.

SEC 3735. When the pupils of said institute are not otherwise supplied with clothing, they shall be furnished by the principal, who shall make out an account of the cost thereof in each case against the parent or guardian, and against the pupil if he or she have no parent or guardian, which account shall be certified to be correct by the principal, and when so certified such an account shall be presumed correct in all courts. The principal shall thereupon remit said accounts by mail to the treasurer of the county from which the pupil so supplied shall have come to said institute. Such treasurer shall proceed at once to collect the same by suit in the name of his county, if necessary, and pay the same into the territorial treasury; the principal shall at the same time remit a duplicate of such account to the auditor of the territory, who shall credit the same to the account of the institute, and charge it to the proper county; *Provided*, If it shall appear by the affidavit of three disinterested citizens of the county, not akin to the pupil, that the said pupil or his or her parents would be unreasonably oppressed by such suit, then such treasurer shall not commence the said suit, but shall credit the same to the territory on his books, and report the amount of such account to the board of commissioners of his county, and the said board shall, out of the general fund of said county, cause the same to be paid into the territorial treasury. [S. L. 1886, ch. 77, § 11.]

Officers and their duties.

SEC. 3736. The officers of the institute shall be a principal and a matron. The principal shall be a resident officer of the same. He shall annually certify to the board of trustees a written report, stating in full the true condition of the educational, the domestic and the industrial departments of the institute, his action and proceedings therein. He shall keep and have charge of the necessary records, register and accounts of said departments; have supervision of its teachers, pupils and servants, and perform such other duties as the board may require. He shall quarterly certify to the board a full and written report of all his expenditures. He shall secure and employ all assistants needed therein, with the consent and approval of the board. He shall have special charge of the male pupils out of school hours, and shall furnish them with employment about the premises, or in some trade to which they are adapted. The products and proceeds arising from the labor and employment of all the pupils shall inure to the use and benefit of the institute. [S. L. 1886, ch. 77, § 12.]

Duties of matron.

SEC. 3737. The matron of the institute shall also be a resident officer of the same. She shall have control of the internal management of the house, and of the female pupils out of school hours; she shall instruct them in and about the house, and the domestic departments, or in some trade to which they are adapted, under the direction of the principal. [S. L. 1886, ch. 77, § 13.]

President to make annual report to governor.

SEC. 3738. The president of the board of trustees shall, on or before the first day of December, in each year, make out to the governor of the territory a full and complete report, as follows, to-wit:

First—A statement of the financial condition of the institute from the date of the last report, giving in detail the amount of moneys received from all sources, and the amount expended;

Second—The value of real estate at date of last report, and cost of improvements made, if any, since last report;

Third—The number of pupils in attendance, also the number that have entered the institute and the number of those who may have left it since last report;

Fourth—The number of deaths, if any, that have occurred in the institute since last report;

Fifth—The improvement, health and discipline of the pupils;

Sixth—The number of officers, teachers and servants employed, with the salary of each;

Seventh—All other needful information touching every point that may be deemed of interest to be communicated. [S. L. 1886, ch. 77, § 14.]

CHAPTER 4.

INSANE ASYLUM.

SECTION.
3739. Creation and location of asylum.
3740. Building commission—Appointment, etc.
3741. Site to be obtained by donation.
3742. Plans and specifications.
3743. Advertising for bid—Awarding contract—Contractor's bond.
3744. Oaths of commissioners.
3745. Superintendent of building.
3746. Authority to issue bonds.
3747. Terms of bonds.
3748. Execution and registration of bonds.
3749. Interest coupons.
3750. Preparation and sale of bonds.
3751. Bonds to be executed on written request.
3752. Issuance of bonds—Custody and disbursement of funds.
SECTION.
3753. Compensation of commissioners.
3754. Tax levy to pay interest.
3755. Redemption of bonds and tax levy therefor.
3756. Manner of levying and collecting tax.
3757. Treasurer's commission.
3758. Separate bond required of treasurer.
3759. Time and place of paying bonds.
3760. Restrictions upon commissioners.
3761. Time for completing building.
3762. Accounts and report of commission.
3763. Construction of this chapter.
3734. Superintendent of asylum—Qualifications and duties.
3765. When asylum open to receive patients.
3766. Paying patients may be admitted.
3767. Report of commission to legislature.

Creation and location of asylum.

Sec. 3739. An asylum for the support and care of the insane shall be erected at Evanston, Uinta County, Wyoming Territory, at a cost not exceeding the sum of thirty thousand dollars, in the manner hereinafter provided. [S. L. 1886, ch. 52, § 1.]

Building commission—Appointment, etc.

Sec. 3740. There shall be a board of commissioners, to consist of three citizens of the territory, who shall be nominated by the governor and confirmed by the legislative council, and who shall hold their office for two years and until their successors are duly appointed and qualified, whose duty it shall be to accept a location at or near the said Town of Evanston, and superintend the erection of suitable buildings for the use of said asylum; and in case of a vacancy in said commission, by death or otherwise, the same shall be filled by appointment by the governor. [S. L. 1886, ch. 52, § 2.]

Site to be obtained by donation.

Sec. 3741. The said board shall accept the most desirable location of not less than one hundred and sixty acres, to be no more than two miles distant from the said Town of Evanston, which said land shall be obtained by donation only, and said board shall take deed of conveyance of the same in fee simple to the Territory of Wyoming, and cause the same to be properly recorded in the office of the county clerk and *ex-officio* register of deeds of said Uinta County. [S. L. 1886, ch. 52, § 3.]

Plans and specifications.

Sec. 3742. Said board shall, at the earliest date practicable, procure plans, drawings and specifications for the buildings necessary and proper for said asylum. The exterior of such buildings shall be of stone or brick, but the plans determined on by the board shall be such as will admit of further enlargement, so as to preserve the symmetry of the building; *Provided*, That the erection of only such portion of such building shall be undertaken by said board, under the provisions of this chapter as may be completed and made ready for occupancy by the appropriation herein made. [S. L. 1886, ch. 22, § 4.]

Advertising for bids—Awarding contract—Contractor's bond.

Sec. 3743. So soon as said board of commissioners shall have obtained a plan which meets with their approval, they shall advertise for four weeks, once each week, in each county of the territory, for sealed proposals for contracts to erect the buildings hereby authorized according to the plans and specifications determined on, and said board is hereby empowered to contract with the lowest responsible bidder for the erection of such portion thereof as may have been determined upon. The contractor shall be required to give a bond to the Territory of Wyoming, in double the amount of the proposal of such contractor, with two or more sufficient sureties, conditioned for the faithful performance of his contract, within a time to be fixed by said board; *Provided*, That no contract shall be entered into by said board, which shall in any event involve a greater expenditure than the sum provided for by this chapter. [S. L. 1886, ch. 52, § 5.]

Oaths of commissioners.

SEC. 3744. Before entering upon the discharge of his duties each member of said commission shall take and subscribe an oath to faithfully, honestly and impartially perform the duties and obligations imposed upon him by the provisions herein contained, which oath shall be filed in the office of the secretary of the territory. [S. L. 1886, ch. 52, § 6.]

Superintendent of building

SEC. 3745. Said board of commissioners shall have full power to appoint and discharge at their discretion a superintendent, whose duty it shall be to superintend the work on said buildings, and who shall receive such compensation only as said board of commissioners may fix, which compensation shall in no event exceed the sum of five dollars per day. [S. L. 1886, ch. 52, § 7.]

Authority to issue bonds.

SEC. 3746. For the purpose of furnishing the money to be used in the erection, furnishing and equipment of said insane asylum, the auditor and treasurer of the territory are hereby authorized to issue the bonds of the territory in any amount not exceeding thirty thousand dollars, in the manner hereinafter named; *Provided*, That no more of said bonds shall be issued than are necessarily required to carry into effect the provisions of this chapter; *And, provided further*, That no more than five thousand dollars of such bonds shall be issued at any one time. The bonds provided for in this section shall be known as the "territorial insane asylum bonds." [S. L. 1886, ch. 52, § 8.]

Terms of bonds.

SEC. 3747. The bonds named in this chapter shall be issued in amounts of one thousand dollars each, and shall be made payable in thirty-five years from the date of their issuance, or sooner, as hereinafter provided, and shall bear interest at the rate of six per centum per annum, payable on the first day of January in each year. [S. L. 1886, ch. 52, § 9.]

Execution and registration of bonds.

SEC. 3748. Such bonds shall be signed by the territorial auditor and countersigned by the territorial treasurer, and shall have affixed thereto the official seals of such auditor and treasurer, and when signed, sealed and issued, as herein provided, shall be entitled to full faith and credit as the binding obligations of this territory, Said bonds shall each be separately numbered from one consecutively upwards, and shall be separately registered in a book kept for that purpose by the territorial treasurer, in the order in which they are issued, and each bond shall state upon its face the amount for which the same is issued, to whom issued, for what purpose and the date of issuance. [S. L. 1886, ch. 52, § 10.]

Interest coupons.

SEC. 3749. Said bonds shall have coupons attached thereto representing the interest to be paid, which coupons shall be signed by the auditor and treasurer, and shall be severally numbered from one to thirty-five inclusive each bearing the number of the bond to which it is attached. The said coupons may be detached from the bonds to which they belong by the holder thereof for the purpose of presentment for payment. [S. L. 1886, ch. 52, § 11.]

Preparation and sale of bonds.

SEC. 3750. The bonds herein authorized shall be prepared and engraved under the direction of a board composed of the territorial treasurer and the commissioners hereinbefore named, and the said board is hereby authorized to negotiate a sale of said bonds for cash, on the most advantageous terms it can obtain for the territory; *Provided*, That such bonds shall not be sold for less than their par value. [S. L. 1886, ch. 52. § 12.]

Bonds to be executed on written request.

SEC. 3751. Said bonds shall be signed and sealed in parcels, not exceeding in amount the provisions of section thirty-seven hundred and forty-six, upon the written request of a majority of the board of commissioners, provided for in section thirty-seven hundred and forty, which request shall state that the same are needed for the purposes for which the same are authorized, and shall state the price at which they have been negotiated. [S. L. 1886, ch. 52, § 13.]

Issue of bonds Custody and disbursement of funds.

SEC. 3752. When any of said bonds are so signed and sealed, they shall be placed in the custody of the territorial treasurer, and shall be charged to said treasurer by the territorial auditor, at the price at which the same have been negotiated, and shall be delivered and issued by the territorial treasurer to the purchaser or purchasers thereof, upon the receipt of the purchase money therefor, and the money derived from the sale of such bonds shall be kept in a separate fund, to be known as the "territorial insane asylum fund," and shall be paid out by the territorial treasurer upon warrants issued by the territorial auditor, as provided in the next succeeding section. [S. L. 1886, ch. 52, § 14.]

Compensation of commissioners.

SEC. 3753. The commissioners shall receive for compensation for their services the actual and necessary expenses incurred by them in the performance of their duties, including their actual and necessary travelling expenses, and for any indebtedness or expense incurred by said commission in carrying out the provisions of this chapter. The territorial auditor shall issue to the person or persons to whom such money is due and payable, his warrant or warrants on the territorial treasurer, upon a certificate signed by a majority of the members of the commission, stating the items of such indebtedness or expense, that the same are just, were necessarily incurred and have not been paid. The warrants so issued shall state the fund out of which the same are to be paid. [S. L. 1886, ch. 52, § 15.]

Tax levy to pay interest.

SEC. 3754. When any of said bonds shall have been issued as herein provided, it shall, in each year thereafter, be the duty of the territorial board of equalization, at the time of making the annual assessment for territorial purposes, to direct the board of the county commissioners of the several counties to levy upon all taxable property a tax sufficient to pay the accruing interest on said bonds for that year. [S. L. 1886, ch. 52, § 16.]

Redemption of bonds and tax levy therefor.

SEC. 3755. Each year, after the expiration of twenty-five years from the time of issuing the bonds, provided for in section thirty-seven hundred and forty-six, one-tenth of all the bonds which shall have been so issued shall be redeemed, beginning with number one and proceeding consecutively upwards, by paying the interest and principal due thereon, and by cancelling the same; and each year after the expiration of the twenty-five years aforesaid, it shall be the duty of the said territorial board of equalization, at the time of making the said annual assessment, to direct the board of the county commissioners of the several counties, to levy upon all taxable property a tax sufficient to pay the accruing interest on said bonds for that year and to redeem one-tenth of the said bonds as aforesaid. [S. L. 1886, ch. 52, § 17.]

Manner of levying and collecting tax.

SEC. 3756. The tax named in the last two preceding sections shall be known as the "territorial insane asylum tax," and shall be levied, collected and paid to the territorial treasurer in the manner provided by law for the levy, collection and payment of other territorial taxes, and shall be paid out of the territorial treasury only for the purposes named in said sections. Such tax shall be a special tax, and shall be so levied and collected in addition to any taxes otherwise provided for by law. [S. L. 1886, ch. 52, § 18.]

Treasurer's commission.

SEC. 3757. The territorial treasurer shall have the custody of the funds provided for in this chapter until the same shall have been paid out, as hereinbefore provided, and he shall be entitled to receive one-third of one per centum commission thereon for the safe keeping and accounting for the same; *Provided*, That he shall not be entitled to any commission on any of said funds turned over to his successor in office. [S. L. 1886, ch. 52, § 19.]

Separate bond required of treasurer.

SEC. 3758. The territorial treasurer shall be required to give a separate bond to the Territory of Wyoming, in such an amount, and with such sureties as shall be approved by the governor, conditioned for the faithful accounting of all moneys coming into his hands under the provisions of this chapter. [S. L. 1886, ch. 52, § 20.]

Time and place of paying bonds.

SEC. 3759. The said bonds, and the coupons thereof, shall be payable as hereinbefore provided, at the territorial treasurer's office, on the first day of January in each year; and when any of such bonds or coupons are paid, the same shall be retained by the treasurer, and cancelled by cutting the word "paid" therein. If any of said bonds are not presented for payment at the time when the same are payable by the provisions of this chapter, the same shall cease to draw interest thereafter. [S. L. 1886, ch. 52, § 21.]

Restrictions upon commissioners.

SEC. 3760. No member of the board of commissioners, provided for in section thirty-seven hundred and forty, shall be or become interested in any contract entered into or made under the provisions of this chapter, nor be or become surety on any bond, conditioned for the performance of any such contract, nor be or become the agent of any contractor for any work on the building in this chapter provided for. [S. L. 1886, ch. 52, § 22.]

Time for completing building.

SEC. 3761. The board of commissioners herein provided for shall enter upon the performance of its duties at the earliest practicable time possible, and shall cause the building to be completed within twelve months from the passage of this chapter, or as soon thereafter as the same can be done. [S. L. 1886, ch. 52, § 23.]

Accounts and report of commission.

SEC. 3762. Said board shall keep a strict and accurate account of all contracts, disbursements and transactions made by it, and upon the completion of its work shall make a full report thereof in writing, to the governor, and shall file, in the office of the secretary of the territory, a record of its proceedings, and all books and papers relating to the erection of the building, and to the management and superintending thereof; it shall also submit to the next legislative assembly of the territory a duplicate of its said report to the governor. [S. L. 1886, ch. 52, § 24.]

Construction of this chapter.

SEC. 3763. Nothing in any act relating to territorial revenue, or in any other act in force, shall be construed to affect or impede the provisions of this chapter. [S. L. 1886, ch 52, § 25.]

Superintendent of asylum—Qualifications and duties.

SEC. 3764. The board of commissioners shall elect one resident physician, who shall be the general superintendent of the insane asylum herein provided for, subject at all times to the order and direction of said board, which shall have power at any time, whenever in their judgment it shall be deemed proper and for the best interests of the territory, to discharge and remove said superintendent. The superintendent so elected shall reside at the asylum, be a graduate in medicine, and receive a salary of eighteen hundred dollars per year, payable quarterly in equal installments. He shall cause to be kept a fair and full account of all his doings, and the actual business and operations of the institution, and submit a monthly report to the board of commissioners. The superintendent shall employ all necessary help needed at the asylum, subject to the approval of the board of commissioners. [S. L. 1886, ch. 52, § 26.]

When asylum opened to receive patients.

SEC. 3765. After the building herein provided for shall have been completed and accepted by the board of commissioners, said board shall serve notice, in writing, upon the boards of county commissioners of all the different counties in this territory, which notice shall state that the asylum for insane at Evanston is now completed, and ready for the reception and care of insane persons. Each board of county commissioners shall, after the receipt of such notice, cause all persons adjudged to be insane, and whose care shall have been thrown upon the county, to be sent as patients of this territory to the insane asylum at Evanston, to be kept and cared for by the territory; and all insane persons, having been sent to asylums outside this territory before the completion of the building herein provided for, shall, upon its completion and notice to the boards of county commissioners, as hereinbefore provided, be returned as soon as practicable, under an order of the respective boards of county commissioners, to this territory, to be kept and cared for at the insane asylum at Evanston. [S. L. 1886, ch. 52, § 27.]

Paying patients may be admitted.

SEC. 3766. Paying patients, whose friends, offer, and will pay, or who have property to pay their expenses, shall be admitted to the insane asylum, according to the terms directed by the board of commissioners thereof; but the insane poor shall in all respects receive the same medical care and treatment, and be given wholesome food, as is given to paying patients. [S. L. 1886, ch. 52, § 28.]

Report of commission to legislature.

SEC. 3767. Said board of commissioners shall report its proceedings for the preceding two years to the legislative assembly of this territory at each session; said report shall contain, among other things, a detailed and full statement of the condition of the funds, and the amount of the expenditures for the preceding two years, the number of paying patients, and the number of poor patients, and the cost of their maintenance; said board shall also, in said report, submit an estimate of the amount of money needed by it for the next two years. [S. L. 1886, ch. 52, § 29.]

TITLE 43. REVENUE, TERRITORIAL AND COUNTY.

CHAPTER 1. MODE OF RAISING REVENUE.
CHAPTER 2. ASSESSMENT OF RAILWAYS AND TELEGRAPH LINES WHEN IN MORE THAN ONE COUNTY.
CHAPTER 3. SPECIAL PROVISIONS RELATING TO THE TAXATION OF PERSONAL PROPERTY.
CHAPTER 4. UNIFORM VALUATION OF LIVE STOCK.
CHAPTER 5. TRANSFER OF CERTAIN DELINQUENT TAXES IN SWEETWATER COUNTY TO FREMONT COUNTY.

CHAPTER 1.

MODE OF RAISING REVENUE.

SECTION.
3768. Purposes for which taxes levied—Limitations upon amount.
3769. Poll tax for county purposes and collection thereof.
3770. Garnishee to pay poll tax to collector.
3771. Property exempt from taxation.
3772. Exemption to persons cultivating forest trees.
3773. Exemption to persons cultivating fruit trees.
3774. Assessor's return to show tree exemptions.
3775. Homesteaders entitled to tree exemptions.
3776. What property subject to taxation.
3777. Term "credits" defined.
3778. By whom property listed—Assessment of railroad property.
3779. Demand and notice how made—"Railroad" defined.
3780. Assessment when railroad refuses to make statement.
3781. Reasonable time for service by mail.
3782. Lands obtained by treaty, etc., subject to taxation.
3783. Commission merchants to list property.
3784. Where personalty to be listed.
3785. How agent to list property.
3786. Where property listed when business in different counties.
3787. Assessment of property of certain corporations.
3788. Taxation of insurance companies.
3789. Assessment of national bank stock.
3790. Property to be listed yearly—Real estate.
3791. Assessment of bank notes, corporate stock, credits, etc.
3792. *Bona fide* debts may be deducted from credits.
3793. Who deemed merchants—Rule of valuation.
3794. Who deemed manufacturers—Rule of valuation.
3795. Assessment books, what to contain.
3796. Duties of assessor—Return of assessment.
3797. Further duties of assessor—Owner refusing to list, etc.
3798. Oath of person assessed—Refusal to be sworn.
3799. Oath of assessor to assessment roll.
3800. Neglect of duty by assessor—Penalty.
3801. County board of equalization—Adjustment of assessments—Notice of increase.
3802. Remedy of person aggrieved by assessment.

SECTION.
3803. Abstract of assessment roll to be sent to auditor.
3804. Territorial board of equalization and its duties.
3805. Auditor to notify county clerks of territorial levy—Duties of clerk.
3806. Time of making county levy—Form of tax list.
3807. Certificate and warrant to tax list—Delivery to collector.
3808. Duties and authority of collector in collecting taxes.
3809. Taxes payable without demand—Notice when tax becomes delinquent.
3810. When tax becomes delinquent—Penalty.
3811. Collection of delinquent taxes—Treasurer's fees.
3812. Delinquent taxes to be collected within one year.
3813. Collector may distrain personalty.
3814. Resisting collector—Penalty.
3815. What taxes payable in warrants.
3816. Where taxes and licenses payable in money—Order of paying warrants.
3817. Error in name—Omitted property added to list.
3818. Manner of selling personalty for taxes.
3819. When taxes become delinquent—Interest—Tax lien.
3820. Delinquent tax list—Collector failing to make settlement—Penalty.
3821. Refunding taxes erroneously paid.
3822. Notice of sale of realty for taxes.
3823. Time and place of sale.
3824. Who deemed purchaser—Restrictions on selling homestead.
3825. Purchaser to pay forthwith—Re-sale.
3826. Defects in notice disregarded.
3827. Certificate of purchase.
3828. Certificate is assignable.
3829. Redemption of realty from tax sale.
3830. Certificate and notice of redemption.
3831. When tax deed to be made.
3832. Form of tax deed.
3833. County to indemnify purchaser when sale unlawful.
3834. Evidence of sale.
3835. Limitations upon actions to avoid sale.
3836. Liability of county for territorial taxes.
3837. Annual settlement of county treasurer—Mode of collecting territorial taxes from counties.
3838. Neglect of duty by officer—Penalty.

Purposes for which taxes levied—Limitations upon amount.

SEC. 3768. There shall be levied and assessed upon the taxable real and personal property within this territory in each year, the following taxes:

First—For territorial revenue, two mills on the dollar when no rate is directed by the territorial board of equalization before the date in each year when the tax ought to be levied and assessed, but in no case shall the tax for territorial purposes exceed four mills on the dollar;

Second—For county revenue, for ordinary county expenses, not more than five mills on the dollar;

Third—For county revenue, for support of the poor and lunatic purposes, not more than two mills on the dollar;

Third—For county revenue for road purposes, not less than one mill, nor more than three mills on the dollar;

Fifth—The county commissioners of each county shall levy a tax sufficient to defray the expenses of the district courts for their respective counties during each year;

Sixth—And in addition to the above, the county commissioners shall levy a poll tax of two dollars for county school purposes, against each person over the age of twenty-one years and under the age of fifty years, which shall be levied and collected as other taxes, and they shall also levy a tax for the support of common schools in their county, not to exceed three mills on the dollar; but the aggregate tax for territorial and county purposes shall in no case exceed sixteen mills on the dollar per annum. [C. L. 1876, ch. 109, § 1. S. L. 1877, p. 97, § 1. S. L. 1886, ch. 99, § 19; ch. 97, § 1.]

Poll tax for county purposes and collection thereof.

Sec. 3769. The board of county commissioners of each county shall, each year, levy a poll tax of two dollars against each person over the age of twenty-one years, which shall be levied and collected as are other taxes, and, in case any person allows his poll tax to become delinquent, it shall be the duty of the sheriff or collector to seize upon such delinquent's property, and sell the same; and said sheriff or collector shall, after deducting said tax and one dollar for his fee, return the overplus, if any, to said delinquent; *Provided*, That in all cases where any person or corporation is owing such delinquent a sum of money sufficient to cover the amount of said tax and the fee, said sheriff or collector may serve a written garnishee or notice on such person, or any agent of such corporation, to withhold the amount of tax and fee from the amount due such delinquent; *Provided*, No poll tax shall be levied or collected from any person over fifty years of age. [C. L. 1876, ch. 92, § 1.]

Guarantee to pay poll tax to collector.

Sec. 3770. Every person or corporation, when notified by the sheriff or collector as specified in the preceding section, shall answer to said sheriff or collector as to the amount due such delinquent, and shall retain said tax and fee out of said amount, and shall pay the same to said sheriff or collector. [C. L. 1876, ch. 92, § 2.]

Property exempt from taxation.

Sec. 3771. The following described property is hereby exempt from taxation:

First—The property of the United States and of this territory, the property of any county, townships, incorporated towns and school districts, when devoted entirely to public use; public grounds, by whomsoever donated to the public, including all places for the burial of the dead;

Second—Fire engines, and all implements used for extinguishing fires, with the grounds used exclusively for the buildings of a fire company or companies;

Third—All grounds and buildings of literary and scientific institutions incorporated under the laws of the territory, also the grounds and buildings of benevolent, agricultural and religious societies or institutions devoted solely to the appropriate objects of these institutions, or the revenue therefrom, if any, which is devoted solely to the appropriate objects of these institutions, the same not exceeding three acres in extent, and not leased or otherwise used with a view to the pecuniary profit of any individual member of such society or institution, and when by the laws of such society or institution, their funds or property of whatever nature cannot be divided among the members thereof, in case of the dissolution of such society or institution;

Fourth—The books, papers, furniture and apparatus belonging to the above institutions, and used solely for the purposes above contemplated, and the like property of students in any such institutions, used for their education. Moneys and credits belonging exclusively to said institutions, and devoted solely to sustaining them, but not exceeding in amount or income the sum prescribed by their charter;

Fifth—Household and kitchen furniture, beds and bedding, wearing apparel of every person, wool, flax and tow, intended to be manufactured, and the food provided for each family, not to exceed in all, the value of one hundred dollars;

Sixth—The polls of all persons who have arrived at the age of fifty years. [C. L. 1876, ch. 109, § 2. S. L. 1877, p. 96, § 1.]

For exemptions of firemen and their wives from poll tax, see §§ 1227-1232.

Exemption to persons cultivating forest trees.

Sec. 3772. For every acre of forest trees planted and suitably cultivated for timber within the territory, the trees not being more than twelve feet apart, and kept in a healthy condition, the sum of two hundred dollars upon the owner's assessment shall be annually exempt from taxation for ten years after each acre is so planted; *Provided*, That said exemption shall not apply to more than twenty-five acres of every one hundred and sixty acres owned and planted by any one person. [S. L. 1879, ch. 83, § 1.]

Exemption to persons cultivating fruit trees.

Sec. 3773. For every acre of fruit trees planted and suitably cultivated within the territory, the trees not being more than thirty-three feet apart and kept in a healthy condition, the sum of one hundred dollars upon the owner's assessment shall be annually exempt from taxation for ten years after such acre is so planted; *Provided*, That said exemption shall not apply to more than twenty-five acres of every one hundred and sixty acres owned and planted by any one person. [S. L. 1879, ch. 83, § 2.]

Assessor's return to show tree exemptions.

Sec. 3774. The exemption stated in the preceding sections shall be made by the assessor at the time of the annual assessment, upon satisfactory proof that the party claiming the same has complied with the two preceding sections, and the assessor shall return to the board of county commissioners of his county the name of each person claiming the exemption, the quantity of lands planted for timber or fruit trees and the amount deducted from the valuation of the property. [S. L. 1879, ch. 83, § 3.]

Homesteaders entitled to tree exemptions.

Sec. 3775. Persons owning no such real estate and living on homesteads under the acts of congress, shall be allowed the benefits of this chapter for any timber or fruit trees planted and cultivated by them in compliance with sections thirty-seven hundred and seventy-two and thirty-seven hundred and seventy-three. [S. L. 1879, ch. 83, § 4.]

What property subject to taxation.

Sec. 3776. All other property, real and personal, within this territory, is subject to taxation in the manner herein directed, and this section is intended to embrace lands and lots in towns including lands bought from the United States, whether bought on a credit or otherwise; buildings or improvements erected upon lands, the title to which still remains in the United States, or in any incorporated company, and all lands entered by pre-emption, final or commuted homestead, or as desert land, or at private or public sale, or under any act of congress, when final receipt therefor has been issued, shall be subject to taxation whether patent for the same has been issued or not, and when such final proof shall have been made before the first day of April in any year, the land so entered shall be subject to taxation for that year. It shall be the duty of the county commissioners of each county to obtain from the officers of the United States land district in which the county may be situated, an accurate transcript and plat of all entries and sales of public land which may or should be subject to taxation under the laws of the United States or of this territory, described by land numbers in their respective counties. Such transcripts shall be filed and preserved in their office, and they shall have the same corrected each year by obtaining as aforesaid, additional or supplementary transcripts. On the first Monday in April of each year, they shall cause to be furnished to the county assessor of the county, a true and correct plat or plats, corrected as aforesaid of all the lands hereinbefore described, situate in the county, and they are hereby authorized and required to make any appropriation necessary to secure the execution of the work provided for in this section. Ferries, franchises and toll-bridges, all of which, for the purposes of this chapter, shall be considered real property. Horses and neat cattle, mules and asses, sheep, swine, goats, and all dogs, and other animals, money in bank, bills, coin or gold dust, whether in possession or on deposit; property, money or labor, due from solvent debtors on contract, or on judgment, and whether within this territory or not; mortgages and other like securities, stock or shares in any bank or company, incorporated or otherwise, and whether incorporated by this or any other territory or state, and whether situated in this territory or not; public stocks or loans, household furniture not otherwise exempt, including gold and silver plate, musical instruments, watches and jewelry, pleasure carriages, stages, hacks, omnibusses and other vehicles for transporting passengers, wagons, carts, drays, sleds, and every other description of vehicle or carriage, all real and personal property within this territory, of every kind and description not heretofore enumerated, belonging to or claimed by any incorporated company, whether incorporated in this territory or not, annuities—but not including pensions from the United States, or any state, nor salaries, nor payment for services expected to be rendered,—and all other property not above exempted, although not herein specified. [C. L. 1876, ch. 109, § 3. S. L. 1886, ch. 97, § 2.]

Term "credits" defined.

SEC. 3777. The term "credits," as used in this chapter, includes every claim and demand for money, labor other valuable things; and every annuity or sum of money receivable at stated periods, and all money in property of any kind, and secured by deed, mortgage or otherwise; but pensions from the United States, or any state, and salaries or payments expected for services to be rendered, are not included in the above term. [C. L. 1876, ch. 109, § 4.]

By whom property listed—Assessment of railroad property.

SEC. 3778. Every inhabitant of this territory, of full age and sound mind, shall list or assist the assessor in listing all property subject to taxation in this territory, as hereinafter directed. The property of a ward is to be listed by the person having the property in charge; if a married woman, by herself or her husband; if a beneficiary for whom property is held in trust, by the trustee, and the personal property of a decedent, by the executor; of a body corporate, company, society or partnership, whether incorporated or formed in this territory, or not, by its principal accounting officer, local agent or partner in the county where the property is located; property under mortgage or lease, is to be listed by, and taxed to, the mortgagor or lessor, unless it be listed by the mortgagee or lessee; *Provided*, That in all cases where a railroad is located, and is being, or has been constructed in or through, any county of this territory, either the president, secretary, general superintendent, division superintendent, general or local agent of any kind of the corporation, company or associations of persons owning or using the same within the county, shall, on demand made by the county assessor of any county of this territory, in or through which said road is being, or has been, or may hereafter be, constructed, be compelled to furnish such assessor with a statement in writing, under oath or affirmation duly subscribed and sworn to, before some officer authorized by law to administer oaths, setting forth the length of said road in such county, and the value thereof, with a list of the property real and personal pertaining thereto, also the whole length of said road within this territory, and the number of, and value of, all locomotives and cars commonly known as "rolling stock," used on said road within this territory, an apportionment of value of such rolling stock shall be listed and assessed to such county, the same to be estimated according to the proportion which the portion in said county bears to the length of said railroad within this territory. The assessor receiving such statement may avail himself of other evidence under oath, and is hereby authorized, for such purposes, to administer oaths relating to the matter of such assessment; *Provided*, Reasonable notice of the time and place of taking such evidence shall be served upon the person making such statement, or on some officer or agent of any kind, of the corporation or company, or upon the owners of said railroad; *And*, *provided further*, That this section shall not apply to the assessment of any railroad company when any portion of the property of such railroad company is situated in more than one county. [C. L. 1876, ch. 109, § 5. S. L. 1879, ch. 6, § 1.]

Demand and notice, how made—"Railroad" defined.

SEC. 3779. The demand and notice, mentioned in the preceding section, and elsewhere in this chapter, may be made by personal service on any of the officers, agents or other persons specified in said section, or by depositing in the postoffice such written demand or notice, properly inclosed in a letter, postage prepaid, and duly directed to such corporation, company or association of persons at the place of the principal office, or at any place of business of such railroad company, or at any place where the owners of such road may be engaged in business, and the word "railroad" and "road" when applied to railroads in this chapter, shall be held to include, in addition to the track of said railroad, the land covered by the right of way of such railroad, and all improvements of any kind, of said corporation, company or owners, thereon, and all personal property owned and used therewith. [C. L. 1876, ch. 109, § 6.]

Assessment when railroad refuses to make statement.

SEC. 3780. If any corporation, company, or persons owning such railroad, or officers or agents thereof, shall neglect or refuse to furnish a statement as heretofore required in this chapter, after having had either personal or written notice as specified in section thirty-seven hundred and seventy-eight, the county assessor may proceed to make such assessment in the most available manner, and if any person, upon whom such demand is made, neglects or refuses to furnish such statement as required, he shall be subject to the penalty provided by this chapter for like cases. [C. L. 1876, ch. 109, § 7.]

Reasonable time for service by mail.

SEC. 3781. In all cases where service of demand or notice required by this chapter is made by letter, as heretofore specified, reasonable time shall be deemed to be double the length of time required for the usual transmission of letters by the United States mail from the place where the letter is deposited to the place where it is directed, and five days additional. [C. L. 1876, ch. 109, § 8.]

Lands obtained by treaty, etc., subject to taxation.

SEC. 3782. All land or lands that may have been or that shall hereafter be acquired by any person, company or corporation, by reason, or as a result, or condition of any treaty, grant or subsidy, whereby full and complete title and control to such land or lands shall have been obtained and possessed by such person, corporation or company, shall be subject to taxation as real property under the laws of this territory. [C. L. 1876, ch. 109, § 9.]

Commission merchants to list property.

SEC. 3783. Commission merchants and all persons trading and dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in the county, are, for the purposes of taxation, to be deemed the owners of the property in their possession, and shall list the average monthly amount of capital in trade since the last assessment. [C. L. 1876, ch. 109, § 10.]

When personalty to be listed.

SEC. 3784. All personal property shall be listed in the county where it may be on the first day of April of the then current year; but if the owner or owners thereof reside out of this territory or fail to return his or their property to the assessor, it shall be listed, assessed and taxed where it then may be; *Provided*, That horses, cattle, mules, sheep, goats, swine and all kinds and classes of live stock shall in all cases be returned, listed, assessed and taxed in the county in which the same are being herded, ranged or kept on the first day of April in each year; and if the agent or agents, person or persons having charge of the property of any person or persons not residing in this territory, shall fail, neglect or refuse to list such property, he shall be subject to the same penalty or penalties hereinafter prescribed for the failure, neglect or refusal of any person owning property to list the same. [S. L. 1886, ch. 97, § 3.]

How agent to list property.

SEC. 3785. Any person authorized as agent or attorney, or required in any way to list property for another, shall list it in the same county in which he would be required to if it were his own, except as otherwise directed by law, but he shall list it separately from his own, naming the person or estate to whom it belongs, but the undivided property of a person deceased may be listed as belonging to heirs, without enumerating them. [C. L. 1876, ch. 109, § 12.]

Where property listed when business in different counties.

SEC. 3786. When a person is doing business in more than one county, the property, and credits, existing in any one of the counties, shall be listed and taxed in that county, and the credits not existing in, or pertaining especially to the business in, any one county, shall be listed and taxed in that where the principal place of business may be. Any individual of a partnership, is liable for the taxes due from the firm. [C. L. 1876, ch. 109, § 13.]

Assessment of property of certain corporations.

SEC. 3787. The property of corporations or companies, whether incorporated or formed in this territory or not, constructing or owning canals ditches, flumes, railways, telegraph lines, plank roads, graded roads, turnpike or toll-roads, bridges, ferries, and similar improvements, shall be assessed to the company or corporation, and may be ascertained by the assessor as provided for in this chapter in the case of railroads, or in the best manner within the power of such assessor. [C. L. 1876, ch. 109, § 14.]

Taxation of insurance companies.

SEC. 3788. Each and every insurance company transacting business in this territory shall be taxed upon the excess of premiums received over losses and ordinary expenses incurred within the territory during the year previous to the year of listing in the county where the agent conducts the business, properly-proportioned by the company, at the same rate that all other personal property is taxed, and the agent shall render the list and be personally liable for the tax, and if he refuses to render the list or to make affidavit that the same is correct, to the best of his knowledge and belief, the amount may be assessed according to the best knowledge and discretion of the assessor, and the county board of equalization may, at their discretion, add fifty per cent. to the amount returned by the assessor. Insurance companies shall be subject to no other taxation under the laws of this territory, except taxes on real estate and the fees imposed by section six hundred and thirty-four. [S. L. 1877, p. 72, § 37.]

Assessment of national bank stock.

Sec. 3789. Shares of stock, in all national banks, held by any person or persons in this territory, shall be assessed at their par value, and the owner or owners thereof, shall be required to pay tax thereon, the same as though they were shares in banks chartered and incorporated by the laws of this territory, or by the laws of any other state or territory; *Provided*, No discrimination shall be made between any national bank, or branch of any national bank, and any other bank doing a bank business in this territory. [C. L. 1876, ch. 109, § 16.]

Property to be listed yearly—Real estate.

Sec. 3790. All taxable property is to be listed and valued each year, and real property is to be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvements in the vicinity, and all other elements of its value. [C. L. 1876, ch. 109, § 17.]

Assessment of bank notes, corporate stock, credits, etc.

Sec. 3791. Bank notes, and the stocks of corporations and companies, shall be assessed at their cash value, credits shall be listed at such sum as the person listing them believes will be received or can be collected, and annuites, at the value which the person listing believes them to be worth in money. [C. L. 1876, ch. 109, § 18.]

Bona fide debts may be deducted from credits.

Sec. 3792. In making up the amount of money and credits which any person is required to list, he will be entitled to deduct from the gross amount, the amount of all *bona fide* debts owing by him, but no acknowledgment of indebedtedness, not founded on actual consideration, and no such acknowledgments made for the purpose of being so deducted, shall be considered a debt within the intent of this section, and so much only of any liability of any persons as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay, on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he, in whose behalf the list is made, will be bound to contribute, but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of an unpaid subscription to any institution or society, nor on account of a subscription to, or installment payable on, the capital stock of any company or corporation. [C. L. 1876, ch. 109, § 19.]

Who deemed merchants—Rule of valuation.

Sec. 3793. Any person owning or having in his possession or control, within this territory, with authority to sell the same, any personal property purchased either in or out of this territory, with a view of being sold at an advanced price or profit, or which has been consigned to him from any place out of this territory for the purpose of being sold within the same, shall be held to be a merchant, for the purposes of this chapter, such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property in his possession, or control, during the year next previous to the time of listing; and if he has not been engaged in that business so long, then he shall take the average during such time as he may have been so engaged; and if he be commencing, he shall take the value of the property at the time of listing. [C. L. 1876, ch. 109, § 20.]

Who deemed manufacturers—Rule of valuation.

SEC. 3794. Any person who purchases, receives or holds personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this chapter, and he shall list for taxation, the average value of such property in his hands, estimated as directed in the preceding section, but the value shall be estimated upon the materials, only, entering into the combination or manufacture. [C. L. 1876, ch. 109, § 21.]

Assessment books, what to contain.

SEC. 3795. On the first Monday in April in each year, the board of county commissioners shall furnish each assessor with suitable assessment rolls and schedules properly ruled and headed, in which to enter the following items:

First—The name of the individual, corporation, company, society, partnership or firm, to whom any property shall be taxable;

Second—His or their lands by township, range, section or part of a section, and where such part is not a legal division or sub-division, some other description sufficient to identify it, and his or their town lots or parts of lots, naming the town in which they are situated, and their proper description by number and block or otherwise, according to the system of numbering in the town;

Third—His or their personal property by the following particulars: Amount of capital employed in manufactures; amount of capital employed in merchandise; number and value of horses; number and value of mules and asses; number and value of neat cattle; number and value of sheep and goats; number and value of swine; number and value of carriages and vehicles of every description; amount of money and credits; amount of all personal or other property not herein enumerated; other property not herein enumerated belonging to any corporation or company, whether incorporated in this territory or not; amount of clocks, watches, jewelry, gold and silver plate; number and value of musical instruments; amount of taxable household furniture; amount of farming utensils and mechanics' tools; amount in stock or shares in any corporation or company; amount of all other property not enumerated; the number of polls, and a column for remarks, and shall also provide the assessor with all necessary books and blanks required to carry out the provisions of this chapter. [C. L. 1876, ch. 109, § 22. S. L. 1886, ch. 97, § 4.]

Duties of assessor—Return of assessment.

SEC. 3796. Each assessor shall enter upon the discharge of the duties of his office, as soon as furnished with the assessment roll by the county commissioners, as hereinbefore provided, and shall, with the assistance of each person required by law to list property for himself or for another, enter in the books furnished him for that purpose, all kinds of property specified in the preceding section, or that may be subject to taxation; entering the names of the persons assessed in alphabetical order, so far as practicable, by allotting to each letter its requisite number of pages in each of said books. He shall also enter in a separate column the number of adult persons, male and female, and the number of children, male and female, under the age of twenty-one years, in his county, and each assessor shall, on or before the fourth Monday of June in each year, return the assessment roll, properly footed up, to the clerk of the board of county commissioners. [C. L. 1876, ch. 109, § 23. S. L. 1886, ch. 97, § 5.]

Further duties of assessor—Owner refusing to list, etc.

SEC. 3797. It shall be the duty of the assessor to list each and every person in his county and to assess all the property, real and personal, therein as required in this chapter, and any person who shall refuse to assist in making out a list of his property, or of any property which he is required by law to assist in listing, on or before the third Monday in June, or refuse to make the oath or affirmation required by this chapter, shall forfeit the sum of two hundred dollars, to be recovered in the name of the county by an action brought in the district court for such county by the board of county commissioners, and when any person refuses to make out a list of his property, which by law he is required to do, or when the assessor, after using all due diligence, cannot see any person having property subject to taxation which by law he is required to assess, the assessor shall assess such property according to the best information he can get as to the amount of such taxable property which such person has, and shall, before making up his assessment rolls, mail to all persons, whom he has been unable to find in person when listing his property, a certified copy of such listing. [S. L. 1884, ch. 77, § 1. S. L. 1886, ch. 97, § 16.]

Assessor shall give notice of meeting of board of equalization, § 3802.

Oath of person assessed—Refusal to be sworn.

SEC. 3798. The assessor is hereby required to administer the following oath or affirmation to each person assessed: "You do solemnly swear that you have given in a full and correct inventory of all taxable property owned by you, and all property held by you as agent, guardian or otherwise, which you are required by law to list, to the best of your knowledge and belief, so help you God." And in case any one refuses to take said oath, the assessor shall note the fact in the column of remarks opposite to such person's name; and should it afterwards appear that such person has not given in a full list of his property, or that under his control, any property so omitted, shall be entered on the book at double the ordinary assessed value of like property, and shall be taxed accordingly. [C. L. 1876, ch. 109, § 25.]

Oath of assessor to assessment roll.

SEC. 3799. Each assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath shall be in substance, as follows: "I, A———— B————, of ———— County, solemnly swear that the value of all property, money and credits, of which a statement has been made and verified by the oath of the person required to list the same, is truly returned as set forth in such statement. That in every case where I have been required to ascertain the amount or value of the property of any person corporation or company, I have diligently and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the annexed return; and that in no case have I, knowingly, omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property, which he was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law, in relation to the assessment of property for taxation." [C. L. 1876, ch. 109, § 26.]

Neglect of duty by assessor—Penalty.

SEC. 3800. If any assessor shall fail or neglect to perform any of the duties required of him by this chapter, at the time and in the manner herein specified, he shall be liable to a fine of not less than twenty dollars, nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of county commissioners. The judgment shall be against him and his sureties on his official bond. [C. L. 1876, ch. 109, § 27.]

County board of equalization—Adjustment of assessments—Notice of increase.

SEC. 3801. The board of the county commissioners of each county shall constitute a board of equalization for the correction and completion of the assessment rolls for their respective counties, and the said board shall hold two regular meetings in each year, at the office of the county clerk at the county seat, as follows: Commencing on the fourth Monday in June, and continuing in session not exceeding fifteen days; and also on the fourth Monday in July, and continuing in session for not less than three nor more than six consecutive days. Said board shall at its first meeting add to said assessment roll any taxable property in their county, not included in the assessment as returned by the assessor, and shall assess the value thereof, and shall hear and determine the complaint of all persons, companies, associations and corporations feeling aggrieved by the assessment of their property as returned by the assessor; and for the purpose of equalizing the assessment roll, the said board may increase, diminish or otherwise alter and correct any assessment or valuation. It shall be the duty of the county clerk of each county, or the person acting as the clerk of said board of equalization, to notify each person, company, association and corporation whose assessment has been raised or increased by the said board of equalization, of the amount of such raise or increase of assessment, or shall notify the agent or agents, attorney or attorneys, or any one of them, of any person, company, association and corporation affected by such raise or increase of assessment as aforesaid. Such notice may be given by personal service, or by statement either written or printed, or partly written or partly printed, or by letter or postal card, postage prepaid and properly addressed, or by other notice, to such person, company, association or corporation, or to the agent or agents, attorney or attorneys thereof, or to any one of them, either of whom may appear before the said board of equalization, at either the first or second meeting thereof, and upon evidence satisfactory to the said board of equalization, that such assessment, or any part thereof, is unjust or more than the assessed value of other property of the same class, or of like value, the said board shall adjust such assessment, in such proportion as in their judgment is proper and right. [S. L. 1886, ch. 97, § 6.]

Remedy of person aggrieved by assessment.

SEC. 3802. Any person who may feel aggrieved at anything in the assessment of his property, may appear before the board of equalization, either in person or by agent, within the time mentioned in the preceding section, and have the same corrected in such manner as to said board shall seem just and equitable, and it shall be the duty of the assesor of each county, when assessing, to give each person assessed a printed notice of the time and place when and where said board of equalization is to meet, as heretofore specified. [C. L. 1876, ch. 109, § 29.]

Abstract of assessment roll to be sent to auditor.

SEC. 3803. Immediately after the assessment roll is corrected by the board of equalization, the county clerk is required to make out an abstract thereof containing the whole number of acres of land listed in the county, and the aggregate value of the same; the total valuation of the town lots, the whole number of horses and their total value; the whole number of mules and asses and their total value; the whole number of neat cattle and their total value; the whole number of sheep and their total value; the whole number of swine and their total value; the whole number of goats and their total value; the whole number of musical instruments and their total value; the whole number and value of clocks, watches, jewelry, gold and silver plate; the total amount of capital employed in merchandise; the total amount of capital employed in manufactures; the total amount of taxable household furniture; the total amount of taxable farming utensils, and mechanic's tools; total value of stock and shares in any corporations or companies; total number and value of carriages and vehicles of every description; total amount of all personal or other property, not herein enumerated, belonging to corporations or companies; the gross amount of all other property returned not herein enumerated; the total amount of the excess of premiums received, over losses and ordinary expenses incurred within the territory, during the year previous to the year of listing, in the county of any and all insurance companies; a copy of which abstract the clerk is directed to transmit forthwith to the auditor of the territory; but the board of county commissioners are authorized to diminish or add to the above list, and to require such different, or further matters, to be returned as it deems advisable. [C. L. 1876, ch. 109, § 30. S. L. 1877, p. 72, § 37.]

Territorial board of equalization and its duties.

SEC. 3804. The governor, treasurer and auditor of the territory, or a majority of them, shall constitute a board of equalization of taxes for the territory. They shall hold a session at the office of the governor, at the capital of the territory, on the second Monday of August in each year, and it shall be the duty of said board to examine the various assessments as far as regards the territorial tax, and shall equalize the valuation of real property among the several counties and towns in the territory in the following manner:

First—They shall add to the aggregate valuation of real property in each county, which they shall believe to be valued below its proper valuation, such per centum in each case, as will raise the same to its proper valuation;

Second—They shall deduct from the aggregate valuation of real property of each county, which they shall believe to be valued above its proper valuation, such per centum in each case as will reduce the same to its proper valuation. [C. L. 1876, ch. 109, § 31. S. L. 1886, ch. 97, § 7.]

Auditor to notify county clerks of territorial levy—Duties of clerk.

SEC. 3805. Said auditor shall keep a full record of the proceedings of said meetings, immediately after the adjournment of which he shall transmit to the county clerk of each county a statement of the per centum to be added to or deducted from the valuation of real property in his county, and shall, on or before the fourth Monday of August in each year, notify each county clerk of the rate of territorial tax that has been determined upon by said governor, treasurer and auditor, to be levied and collected in each county, which shall not exceed four mills on the dollar of valuation, and when the territorial board of equalization fixes no different rate, or if for any reason the board should fail to sit, or the county clerk should fail to receive the statement of the rate of tax ordered by them by the fourth Monday of August in each year, then the rate first mentioned in this chapter shall be deemed to be levied for territorial purposes, and the clerk of each county, in making up the tax list required by section thirty-eight hundred and three shall compute and carry out in the proper column a territorial tax at the rate aforesaid. Any clerk failing to perform any duty enjoined upon him by this chapter, may be fined in any sum not less than five hundred dollars nor more than three thousand dollars, to be recovered against him and his sureties by a civil action in the name of the people of the Territory of Wyoming, and shall also be liable on his official bond to any person who may have suffered damage thereby. [C. L. 1876, ch. 109, § 32. S. L. 1877, p. 97, § 1. S. L. 1886, ch. 97, § 8.]

For "territorial bond tax," see §§ 3687-3689.
For university income tax, see § 3716.
For "territorial insane asylum tax," see §§ 3754-3756.
For stock indemnity tax, see § 4213.

Time of making county levy—Form of tax list.

SEC. 3806. On the first Monday of September in each year, the board of county commissioners shall, by an order to be entered of record among their proceedings, levy the requisite taxes for the year, and the same may be levied at any time prior to the first Monday of September, if the statement and notice required by the last preceding section has been received from the auditor. Immediately after the taxes are levied, the county clerk shall make out a tax list in tabular form and in alphabetical order, having distinct columns for lands, and for town lots, and their value, and for the value of personal and other property, and for carrying out, in a column by itself, the amount of each different tax, and having one or more columns for delinquent taxes. Such list may be in the following form:

Owner's name.	Part of section.	Section.	Township.	Range.	Acres.	Name of town.	Lots.	Block.	Value of.	Real estate.	Value of.	Personal and other property	Poll tax.	Territorial.	County tax.	Poor and paupers.	Roads.	District court.	School tax.	Delinquent.	Delinquent.	Remarks.
	Pres'ty .	—	—	—	—	—	—	—	—	—	—	—	—	50	500	200	200	400	100			
	N. e. ¼	6	7	5	160	—	—	—	—	—	—	—	—	150	1500	600	600	1200	300			
	W. ½. . .	8	6	4	80	—	—	—	—	—	—	—	—	50	500	200	200	400	400			
	N. e. ¼. .	—	—	—	—	—	—	—	—	—	—	—	—	50	500	200	200	400	100			
	— —	—	—	—	—	—	—	—	—	—	—	—	—	100	1000	400	400	800	200			

[C. L. 1876, ch. 109, § 33. S. L. 1886, ch. 97, § 9.]

Certificate and warrant to tax list—Delivery to collector.

SEC. 3807. An entry is required to be made upon the tax list, by the county clerk, in the form of a certificate, under seal, showing what it is, and for what county and year it is, and he shall also attach to this list his warrant, under his hand and official seal, in general terms requiring the collector to collect the taxes therein levied, according to law; and no informality in the above requirements, shall render any proceeding for the collection of taxes illegal. The clerk is required to deliver the list, or cause the same to be delivered, to the collector of the county by the third Monday of September in each year, and the collector's receipt shall be taken therefor, and such list shall be full and sufficient authority for the collector to collect all taxes therein contained. [C. L. 1876, ch. 109, § 34. S. L. 1886, ch. 97, § 10.]

Duties and authority of collector in collecting taxes.

SEC. 3808. The collector, on receiving the tax list and warrant, shall proceed immediately to collect the taxes therein levied, and the list and warrant thereto attached shall be his authority and justification against any illegality in the proceedings, prior to receiving the list. And he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the list of former years; the collector shall receipt to each person or corporation for the amount of tax received by him from them, specifying therein each kind of tax, and when the same was paid, and shall make the proper entries of such payment on the tax list. [C. L. 1876, ch. 109, § 35. S. L. 1882, ch. 45, § 8.]

Taxes payable without demand—Notice when they become delinquent.

SEC. 3809. No notice, demand or request shall be necessary on any taxpayer in this territory for the payment of his, her, their or its taxes, but from and after the third Monday in September in each year all territorial, county and school district taxes shall be due and payable at the collector's office in each county, and it is made the duty of each and every taxpayer to pay his taxes at the collector's office on or before the thirtieth day of November in each and every year, after which date last aforesaid all unpaid taxes are declared to be delinquent, but it shall nevertheless be the duty of the collector to notify each taxpayer of said county at least thirty days before the said thirtieth day of November in each year of the amount of tax due from each taxpayer, and of the date when the same will become delinquent, which notification shall be by postal card, deposited in the postoffice, addressed to such taxpayer at his, her, their or its postoffice address, if the same be known, but if such address be unknown, then such notice shall be addressed to the party at the county seat of the county. [S. L. 1882, ch. 45, § 8. S. L. 1886, ch. 97, §§ 11 and 14.]

When tax becomes delinquent—Penalty.

SEC. 3810. There shall be added to all delinquent taxes for the failure of the taxpayer to pay the same before the thirtieth day of November in each year ten per centum of the amount thereof, which said per centum shall attach and become due from and after the thirtieth day of November in each year, and shall go to the county treasury if paid without distress or sale of property to enforce such payment, but in case the said tax and ten per centum thereon are not paid until after distress or sale of property to enforce payment then said per centum shall go to the collector in addition to his fees and expenses in the collection of said tax. [S. L. 1882, ch. 45, § 9. S. L. 1886, ch. 95, §§ 11 and 15.]

Collection of delinquent taxes—Treasurer's fees.

SEC. 3811. After the taxes become delinquent in any year the collector of each county shall at once proceed to make demand upon taxpayers for the taxes due together with the ten per centum added thereto, and in case of nonpayment he shall levy distress upon the real or personal estate of the delinquent, as may be most convenient, and sell any or all property in the manner provided by law, sufficient to pay such delinquent taxes and the per centum and costs, and for his services he shall have fifteen cents per mile for every mile necessarily traveled in making collection of such taxes, and all such costs together with the expense of advertisement shall be added to such delinquent tax and therewith collected, the collector for his services in collecting delinquent taxes when a sale of property is necessary to enforce such collection, and such sale is made, shall be entitled to receive the following fees, to be collected from the taxpayer with the tax and ten per centum added thereto: For sale of personal property for taxes, five dollars; for advertising property for sale, one dollar; for issuing certificate to purchaser of real property sold for taxes, one dollar; he shall also be entitled to receive the following fees from the party to whom the documents are issued: For certificate of redemption, one dollar; for deed for land sold for taxes, five dollars. [S. L. 1882, ch. 45, § 10.]

Delinquent taxes to be collected within one year.

SEC. 3812. In all cases where any taxes due from any person or corporation have become delinquent in any of the counties in this territory, and such taxes have not been fully paid, and in all cases where any taxes may hereafter become due from any person or corporation in any of the counties in this territory and shall become delinquent, it shall be lawful and it is hereby made the duty of the officer whose duty it now is by law to collect delinquent taxes, to proceed and collect all such taxes as have already become delinquent and remain unpaid, and all such taxes as may hereafter become delinquent at any time within one year after such taxes become or may become due and payable. [S. L. 1876, ch. 33, § 1.]

Collector may distrain personalty.

SEC. 3813. In the collection of such delinquent taxes as are mentioned in the preceding section, it shall be lawful for the officer whose duty it is or may be to collect the same, to make the same by distress and sale of the personal property of the party owing such tax or liable for the same notwithstanding such party may have real estate in the county where such tax is due, and the delinquent tax list alone shall be a sufficient warrant for such distress. [S. L. 1876, ch. 33, § 2.]

Resisting collector—Penalty.

SEC. 3814. If the collector be resisted or impeded in the execution of his duties under this chapter he may require any suitable person or persons, to aid him therein, and if such person or persons, refuse to give such aid, he, or each of them, shall forfeit a sum not exceeding ten dollars, to be recovered in a civil action in the name of and to the use of the county, before any justice of the peace, on the complaint of said collector, or any other person, and the person or persons resisting shall be liable, as in case of resisting the sheriff in the execution of civil process. [S. L. 1879, ch. 33, § 3.]

What taxes payable in warrants.

SEC. 3815. Territorial warrants are receivable for the full amount of taxes payable into the territorial treasury; money only is receivable at the county treasury of the proper county for poll tax and school tax; all other county taxes may be paid in county warrants. When a territorial or county warrant of any kind is received by the collector for taxes, he is directed to indorse on it the name of the person from whom he received it, the amount for which it was received and the date thereof, and from that date the warrant is to be regarded as canceled, and cannot be re-issued, but when the county warrant amounts to more than is to be paid by the person presenting it for taxes, the collector will give him a certificate of the balance due him, which shall entitle him to another warrant on the same fund as the original warrant on presentation of said certificate to the board of county commissioners; *Provided*, That this section has no application except in the Counties of Laramie and Albany. [C. L. 1876, ch. 109, § 36. S. L. 1879, ch. 62, § 1.]

Where taxes and licenses payable in money—Order of paying warrants.

SEC. 3816. All taxes and licenses shall be payable in money, and all orders and warrants, properly attested, shall be entitled to a preference as to payment, according to date of presentation and acceptance at the treasurer's office, the oldest date to have the preference, but the treasurer shall not refuse to pay any order or warrant because there is one or more orders or warrants unpresented and prior in the order of payment, if there is sufficient money in the treasury to pay all such prior orders or warrants, with what interest may be due thereon, as well as the order then presented for payment. And when the unpresented orders, which would be paid upon presentation and which draw interest, shall amount to five hundred dollars, the treasurer shall cause two weekly notices to be inserted in the official organ of the county, briefly describing them by numbers, date, amount and in whose favor drawn, and notify the holders that they will cease to draw interest in ten days after the second notice; *Provided*, That this section shall not apply to Laramie and Albany Counties. [S. L. 1879, ch. 62, § 1.]

Error in name—Omitted property added to list.

SEC. 3817. If, on the assessmentroll, or on the tax list, there be any error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable, and can be identified by the collector or assessor; and when the collector, after the tax list is committed to him, ascertains that any land or other property is omitted, he will report the fact to the assessor, who, upon being satisfied thereof, will enter it upon his assessment roll, and assess the value, and the collector will enter it upon the tax list, and collect the tax as in other cases. [C. L. 1876, ch. 109 § 37.]

Manner of selling personalty for taxes.

SEC. 3818. When the collector distrains goods, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale, within five days after the taking, in the manner constables usually are required to give notice of the sale of personal property under execution, and the time of sale shall not be more than ten days from the day of the taking, but he may adjourn the sale from time to time, not exceeding three days, and shall adjourn at once when there are no bidders, and, in case of adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, transportation and fees of sale, shall be returned to the owner, and the collector shall, on demand, render an account in writing of the sale and all charges. [C. L. 1876, ch. 109, § 39.]

When taxes become delinquent—Interest—Tax lien.

SEC. 3819. On the thirtieth day of November in each year, the unpaid taxes of that year become delinquent, and shall draw interest at the rate of twenty-five per centum per annum until paid, or collected by distress and sale, and taxes upon real property are hereby made a perpetual lien thereupon, against all persons or corporations except the United States and this territory, and taxes due from any person on personal property, shall be a lien on any real property owned by such person. [C. L. 1876, ch. 109, § 41. S. L. 1886, ch. 97, § 11.]

Taxes are also a lien upon personalty, § 3844.
As to when taxes shall be paid by grantor, and when by grantee, see § 3850.

Delinquent tax list—Collector failing to make settlement—Penalty.

SEC. 3820. Immediately after the thirtieth day of November of each year, the county collector shall from the tax list in his hands make out a complete list of all delinquent taxes for that and preceding years due from every person or persons; attach his certificate to said statement, showing what the same is, and file the same in the office of the county treasurer, which said statement shall be at all times a sufficient warrant and authority for the collector of taxes upon which to proceed to collect any and all delinquent taxes; and if any collector shall fail or refuse to make any payment or settlement required by law he may be fined in any sum not less than one thousand dollars, nor more than five thousand dollars to be recovered by a civil action by the board of county commissioners in the name of, and to the use of the people of the Territory of Wyoming. [C. L. 1876, ch. 109, § 42. S. L. 1877, p. 93, § 2. S. L. 1886, ch. 97, § 11.]

For publication of delinquent tax list, see § 1815.

Refunding taxes erroneously paid.

SEC. 3821. In all cases where any person shall pay any tax, or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to clerical errors or other errors, the board of county commissioners shall direct the treasurer to refund the same to the taxpayer, or, in case any real property subject to taxation, shall be sold for the payment of such erroneous tax, the error in tax may at any time be corrected as above provided, and shall not affect the validity of the sale, but such property shall be redeemed by the county as hereinafter set forth. [C. L. 1876, ch. 109, § 43.]

Notice of sale of realty for taxes.

SEC. 3822. The treasurer shall give notice of the sale of real property for delinquent taxes, by publication thereof, once a week for four weeks, in a newspaper in his county, if there be one; the first insertion of which notice shall be at least four weeks before the day of sale, and by a written notice posted on the door of the court house, or building commonly used therefor, for four weeks before the sale, and if there be no newspaper published in the county, the like notice shall be given by posting one written notice in each of the five most public places in the county in which any land to be sold is situated, and one on the court house door, or door of the county building. Such notice shall contain a notification that all lands on which the taxes of ———— have not been paid, will be sold, and the time and place of such sale, with a list of the lands. Ten per cent. upon the amount of taxes due, shall be added when lands are advertised. [C. L. 1876, ch. 109, § 44.]

Time and place of sale.

SEC. 3823. Such sale is directed to take place at the court house or county building, as herein provided, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and may be adjourned from day to day, Sundays excepted, until all the lands are sold. [C. L. 1876, ch. 109, § 45.]

Who deemed purchaser—Restrictions on selling homestead.

SEC. 3824. The purchaser who offers to pay the amount of taxes due on any parcel of land for the smallest portion of the same, is to be considered the purchaser. The homestead is liable to be sold for no tax, save that which is due on itself exclusively, and to that end the quantity of land bid in, may be obtained by drawing the division line in any direction, so as to avoid the homestead. [C. L. 1876, ch. 109, § 46.]

Purchaser to pay forthwith—Re-sale.

SEC. 3825. The person purchasing any lot or parcel of land shall forthwith pay to the treasurer the amount of taxes and costs on said lot or parcel of land, and on failure to do so, said land shall at once be sold again, in the same manner as if no sale had been made. [C. L. 1876, ch. 109, § 47.]

Defects in notice disregarded.

SEC. 3826. No irregularity or informality in the advertisements, shall affect in any manner, the legality of the sale, or the title to any real property conveyed by the treasurer's deed under this chapter, but in all cases the provisions of this chapter shall be deemed sufficient notice to the owners, of the sale of their property. [C. L. 1876, ch. 109, § 48.]

Certificate of purchase.

SEC. 3827. The county treasurer shall make out, sign, and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property, on which the taxes and costs were paid by the purchaser, as the same are described in the record of sale, and also how much and what of each lot or parcel of land was sold. If any person shall become the purchaser of more than one lot or parcel of land, he may have the whole put in one certificate. For each certificate, the purchaser shall pay the treasurer a fee of fifty cents. [C. L. 1876, ch. 109 § 49.]

Certificate is assignable.

SEC. 3828. Such certificate of purchase shall be assignable by indorsement, and such assignment shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser. [C. L. 1876, ch. 109, § 50.]

Redemption of realty from tax sale.

SEC. 3829. Real property sold under this chapter may be redeemed at any time before the expiration of two years from and after the date of the sale, by the payment to the treasurer of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold, and thirty per cent. on the same, with twelve per cent. interest per annum on the whole amount, from the day of sale, and the amount of all taxes accruing after such sale, with twelve per cent. interest per annum on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption is made, which fact may be shown by the collector's receipt; *Provided*, That if real property of any minor, married woman, or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed upon the terms specified in this section, which redemption may be made by guardian or legal representatives. [C. L. 1876, ch. 109, § 51.]

Certificate and notice of redemption.

SEC. 3830. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this chapter, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed, and he shall make the proper entries in the book of sales in his office, and shall immediately give notice of such redemption to the person holding the certificate of purchase. [C. L. 1876, ch. 109, § 52.]

When tax deed to be made.

SEC. 3831. Immediately after the expiration of the term of two years from the date of the sale of any lands for taxes, under the provisions of this chapter, which have not been redeemed, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser; upon the return of the certificate of purchase, the treasurer is required to demand two dollars for each deed made by him on such sales; but any number of parcels of land bought by one person may be included in one deed, as may be desired by the purchaser. [C. L. 1876, ch. 109, § 53.]

Form of tax deed.

SEC. 3832. Deeds executed by the treasurer shall be substantially in the following form:

Know all men by these presents, that whereas, the following described real property, viz: (here insert the description) situated in the county of ———, and Territory of Wyoming, was subject to taxation for the year (or years) A. D. ———; and whereas the taxes assessed upon said real property for the year (or years) aforesaid, remained due and unpaid at the date of such sale hereinafter named, and whereas the treasurer of the said county did on the ——— day of ———, A. D. 18—, by virtue of the authority vested by law, at (an adjourned sale), the sale begun and publicly held on the ———, A. D. 18—, expose to public sale at the court house (or county building) in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interests and costs then due, and remaining unpaid on said property, and whereas at the time and place aforesaid, A. B., of the county of ———, and ——— of ———, having offered to pay the sum of ——— dollars and ——— cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property for (here follows a description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price (and whereas the said A. B. did, on the ——— day of ———, A. D. 18—, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property, to C. D., of the county of———, and ——— of ———): and, whereas, two years have elapsed since the date of said sale, and the said property has not been redeemed therefrom, as provided for by law; now, therefore, I, E. F., treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid, as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said A. B. (or C. D.) his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him, the said A. B., (or C. D.) his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

In witness whereof, I, E. F., treasurer, as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed by name, on this ——— day of ———, A. D. 18—.

E. F., Treasurer.

Which deed shall be acknowledged by the treasurer before the clerk of the district court, as follows:

TERRITORY OF WYOMING, } ss.
——————— COUNTY. }

I hereby certify, that before me the undersigned, —————, in and for said county, personally appeared the above named E. F., treasurer of said county, at the date of the execution of the above conveyance, and known to me to be the identical person whose name is affixed to, and who executed the above conveyance, as treasurer of said county, and who acknowledges the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purposes therein expressed. Given under my hand and official seal this ——— day of —————, 18—.

[SEAL.] ———————, Clerk of District Clerk.

[C. L. 1876, ch. 109, § 54.]

County to indemnify purchaser when sale unlawful.

SEC. 3833. When, by mistake or unlawful act of the treasurer, land has been sold on which no tax was due at the time, or whenever land is sold unlawfully in consequence of any other mistake or irregularity rendering the same void, the county shall hold the purchaser harmless by paying him the amount of principal, interest and cost to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable to the county for the amount; *Provided*, That the treasurer or his sureties shall be liable only for his own or his deputies' acts. [C. L. 1876, ch. 109, § 55.]

Evidence of sale.

SEC. 3834. The books and records belonging to the offices of the clerk of the board of county commissioners and the county treasurer, or copies thereof duly certified shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon. [C. L. 1876, ch. 109, § 56.]

Limitation upon actions to avoid sale.

SEC. 3835. No action for the recovery of real property, sold for non-payment of taxes, shall be maintained unless the same be brought within six years after the date of sale for taxes aforesaid. [C. L. 1876, ch. 109, § 57.]

Liability of county for territorial taxes.

SEC. 3836. Each county is responsible to the territory for the amount of tax levied for territorial purposes, excepting such amounts as are certified to be double or erroneous assessments, and no allowance or credit shall be given to any county for any part other than this, of such tax levy remaining uncollected. [C. L. 1876, ch. 109, § 58. S. L. 1882, ch. 103, § 1.]

Annual settlements of county treasurer—Mode of collecting territorial taxes from counties.

SEC. 3837. It shall be the duty of the treasurer of each county to make a settlement annually with the board of the county commissioners on the first Monday of January of each year, and as often during the year as said board may require it and on or before the first Monday of January of each year, the said treasurer shall make a full and complete settlement with the territorial treasurer for the tax levy of the preceding year; and upon his refusal or failure to make such settlements as required, he shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, to be recovered by action in the district court, against the treasurer and his sureties, by the board of the county commissioners. Delinquencies on the part of any county in payment of the territorial tax levy shall bear interest at the rate of eight per centum per annum, after the fifteenth day of January when said tax levy was payable to the territorial treasurer; and in case of any such delinquency on the part of any county it shall at once be the duty of the territorial treasurer to cause an action at law to be brought against such county in the name of the Territory of Wyoming to recover the amount of any such delinquency, and for that purpose may employ an attorney whose services shall be paid for out of the contingent fund of the treasurer's office. In case any judgment is obtained in such action it shall be the duty of the board of the county commissioners of the county against which such judgment is obtained, at the time of the next annual levy of taxes to cause a special levy to be made of a rate sufficient to pay said judgment and interest thereon at the rate of eight per centum per annum, which levy shall be in addition to the regular levies made in said county for the year. The board of the county commissioners of any county may without suit or action, make the special levy necessary to raise the amount of any such delinquency. [S. L. 1882, ch. 103, § 2. C. L. 1876, ch. 97, § 12.]

Neglect of duty by officer—Penalty.

Sec. 3838. Any officer neglecting or refusing to comply with any of the requirements of this chapter, for whose negligence or failure no other penalty is provided by this chapter, shall be liable to a fine not exceeding one thousand dollars, to be recovered against him and his securities as provided in this chapter. [C. L. 1876, ch. 109, § 61.]

CHAPTER 2.

ASSESSMENT OF RAILWAYS AND TELEGRAPH LINES WHEN IN MORE THAN ONE COUNTY.

SECTION.

3839. Company to make verified statement of property—Mode of making and apportioning valuation.
3840. Notice of meeting of board—Hearing complaints.
3841. Tax levy made on valuation fixed by board.
3842. Manner of collecting taxes.

Company to make verified statement of property—Mode of making and apportioning valuation.

Sec. 3839. The president, secretary, superintendent, or other principal accounting officers of any railroad or telegraph company having property in this territory, at the time of the assessment of every railroad and telegraph company, whether incorporated by any law of this territory or not, when any portion of the property of said railroad or telegraph company is situated in more than one county, shall list for assessment and taxation, verified by the oath or affirmation of the person so listing, all the following described property belonging to such corporation within the territory, viz: Roadbed, superstructure, right of way, and all structures situated thereon, rolling stock, side track, telegraph lines, furniture and fixtures and personal property, belonging to such corporation. Such list shall contain: *First*—The number of miles of such railroad or telegraph line in the Territory of Wyoming, and the number of miles of the same in each organized county therein; *Second*—And such return shall be made to the auditor of the territory on or before the first day of July annually. If the return aforesaid be not received by said auditor by the third day of July, he shall thereupon proceed to obtain the facts and information aforesaid, in any manner that may appear most likely to secure the same correctly, and for that purpose may address a written communicatian to the corporation, or to some officer of the corporation who has failed or refused to make the return aforesaid. A meeting of the territorial board of equalization, consisting of the governor, territorial treasurer and territorial auditor, shall be held at the office of the governor on the second Monday of August of the then current year, and the said territorial board of equalization shall then value and assess the property of said corporation for each mile of said road or line, the value of each mile to be determined by dividing the sum of the whole valuation by the number of miles of said road or line. In making up such valuation or assessment the said board shall examine and consider the return herein required to be made or the information procured by the auditor in default of such return, together with such other reliable information relative thereto, as they may be able to procure; said board shall not assess the value of any machine shop or repair shop, or other buildings, not situated on said right of way or grounds or other real estate of any corporation or company within this territory, but it shall be the duty of the assessor of the county, or district, in which said machine or repair shops, or other buildings, or grounds, or other real estate is situated, to assess the same and make return thereof, in the manner now provided for the assessment and return of real estate. On or before the fourth Monday of August, or so soon thereafter as the said board, or any two thereof, shall have made and determined said valuation and assessment, the territorial auditor shall certify to the county clerks of the several counties in which property of the aforesaid corporation, or any part thereof, may be situated, the assessment per mile so made on the property of such corporation, specifying the number of miles and amount in each of such counties. The county commissioners shall thereupon divide and adjust the number of miles and the amounts falling within each precinct, township or school district, in their respective counties, and cause such amounts to be entered and placed on the lists of taxable property returned by the several assessors. The auditor shall certify whether a return was made to him by such corporation or proper officer thereof, or whether the information required in and by such returns was procured by himself, and in case the return was not made as required by this chapter, or being made, was not sworn to, it shall be the duty of the county commissioners to add any amount not exceeding ten per cent. to the valuation thus brought before them; *Provided*, That this chapter shall not be construed to apply to the assessment and equalization of the property of railway and telegraph companies by any incorporated town, city or village. [S. L. 1879, ch. 6, § 1. S. L. 1882, ch. 4, § 1. S. L. 1886, ch. 97, § 13.]

Notice of meeting of board—Hearing complaints.

SEC. 3840. The territorial board of equalization shall give at least five days' notice of the time and place of its meeting, provided for in the preceding section of this chapter, to the officer of said railroad or telegraph company, making such return as aforesaid, and such company shall have the right to appear and be heard before said board, on all matters relating to the assessment of the property of said company. [S. L. 1879, ch. 6, § 2.]

Tax levy made on valuation fixed by board.

SEC. 3841. The county commissioners of the respective counties, in which any portion of said railroad or telegraph line may be situated, shall levy the requisite taxes for the year, upon the valuation of the property of said railroad or telegraph company, return to them as aforesaid at the time provided by law for levying of other taxes. [S. L. 1879, ch. 6, § 3.]

Manner of collecting taxes.

SEC. 3842. The taxes assessed and levied upon the property of any railroad, or telegraph company, under the provisions of this chapter, shall be collected at the time and in the manner provided by law, for the collection of other taxes. [S .L. 1879, ch. 6, § 4.]

CHAPTER 3.

SPECIAL PROVISIONS RELATING TO THE TAXATION OF PERSONAL PROPERTY.

SECTION.
3843. Assessment of stock coming into territory after annual assessment.
3844. Tax lien on personalty—Liability of owner.
3845. Taxation of personalty remaining in territory less than a year.
3846. Assessment under last section—Hearing grievances.
SECTION.
3847. Collector may detain property about to be removed.
3848. Neglect of duty by collector or assessor—Penalty.
3849. Sale of personalty for taxes.
3850. Grantor and grantee, which shall pay taxes.

Assessment of stock coming into territory after annual assessment.

SEC. 3843. Any live stock that may be driven into any county of this territory for the purpose of grazing therein, at any time previous to the thirty-first day of December in any year shall be subject to assessment for all taxes leviable in said county for the year then past, in the same manner and to the same extent as though said stock had been in the county at the time of the annual assessment, and it shall be the duty of the proper officers to assess the same at any time after the time of the annual assessment, and said taxes shall become due and be collected at the same time and in the same manner as the annual levy, and if assessed after such annual levy is payable they shall become due and be collected as soon as assessed, and if not paid shall then become delinquent and be treated in the same manner as other delinquent taxes; *Provided*, That if such stock shall be assessed and taxed at the next annual assessment, and such tax shall be collected, the county commissioners shall remit a just proportion, according to the portion of the calendar year for which said stock remained in the territory of the tax first above provided for in this section. [S. L. 1882, ch. 91, § 1.]

Tax lien on personalty—Liability of owner.

SEC. 3844. All taxes levied upon personal property, of any kind whatsoever, shall be and remain a perpetual lien upon the property so levied upon, until the whole of such tax is paid; *Provided, however*, That in the case of a transfer of property before payment of the said tax levied thereon and after such levy, the tax thus levied shall be collected from the person or persons against whom the same was levied, if such person has real or personal property out of which payment thereof can be enforced; but if such person be not possessed of such real or personal property, then the payment thereof shall be enforced against the property thus taxed. [S. L. 1884, ch. 93, § 2.]

Taxation of personalty remaining in territory less than a year.

SEC. 3845. Any personal property brought, driven or coming into this territory at any time prior to the last day of each year, and which shall remain in the territory for a period of not less than thirty days, shall be subject to and shall be assessed for all taxes leviable in the county in which the same shall thus be found for that year, in the same manner and to the same extent as though said property had been in the county at the time of the annual assessment; *Provided*, That such property has not been regularly assessed in some other county of the territory for that year, and it shall be the duty of the proper officers to assess the same at any time after the time of the annual assessment, and said taxes shall become due and payable, and shall be collected at the same time and in the same manner as the annual taxes levied in such county; and if assessed after such annual taxes are payable, they shall become due and payable as soon as assessed and levied, and if not paid on demand, shall then become delinquent, and shall be treated and collected in the same manner as other delinquent taxes; *Provided*, That if said property shall have been in the territory before such assessment for any time more than thirty days and less than six months, then there shall be levied against the same but a half year's tax, the same to be computed at one-half the tax levied against other like property for the current year; and to this end the assessor assessing the same shall, in his assessment, return and show the length of time said property has been in the territory; *And, provided further*, That nothing herein contained shall be construed into an authority to assess or levy a tax by additional assessment and levy, upon any merchant or dealer within the territory, on goods, wares or merchandise brought into the country to replenish the stock of such merchant or dealer, and keep it up to the amount at which it was originally assessed, and who has already been asssessed on his stock for the current year. [S. L. 1884, ch. 93, § 3.]

Assessment under last section—Hearing grievances.

SEC. 3846. All property, mentioned in the last preceding section, shall be assessed at the same value as property of like kind and character is appraised and valued by the board of equalization for the current year; and the assessment thereof shall be made by the assessor as soon as possible after the knowledge by him of the existence of such property in the county, and shall be made in the same manner as other assessments are made, and as soon as thus made he shall forthwith return the same to the county clerk of the county; and it is hereby made the duty of such county clerk to at once levy the tax thereon, and at once enter the same upon the tax list of the county for the current year, and extend against the same the tax thus levied thereon; *Provided*, That such levy shall be the same as that made upon like property for the current year; any person aggrieved by any proceedings under this chapter may apply to the board of county commissioners of the county at any of its general or special meetings, to have such assessment equalized or corrected in any just particular; and in such complaint it shall be the duty of such board to equalize or correct such assessment as justice may require; and if such party shall have paid an unjust tax, then to refund to him the amount he thus paid in excess of what he ought to have paid; *Provided*, That such complaint shall be made in writing, setting up the facts and ground of complaint, and shall be duly verified by the person compaining, his or her agent or attorney, and shall be filed with the clerk within three months next after the demand for such taxes is made. [S. L. 1884, ch. 93, § 4.]

Collector may detain property about to be removed.

SEC. 3847. In case the collector of taxes in any county shall have reason to believe and does believe that any property in the county, and subject to assessment and taxation under this chapter, will be removed out of the county before the tax due or to become due thereon has been paid, he shall have power to levy upon and take possession of and detain so much of such property, wherever found within the limits of this territory, as will probably be necessary to pay the taxes so due or to become due for the year, and the costs of keeping said property. But in such case the property so detained shall be released, if any party interested therein will and does deposit with the collector a sum of money sufficient to pay all such taxes and costs. [S. L. 1884, ch. 93, § 5.]

Neglect of duty by collector or assessor—Penalty.

SEC. 3848. In case the assessor or collector shall either of them wilfully or negligently omit to perform any duty imposed on him by this chapter, the officer so offending shall forfeit double the amount of the tax or taxes lost to the county by his neglect, the same to go into the public school fund of the county, and to be collected by civil suit with costs of action, as in other cases. [S. L. 1884, ch. 93, § 6.]

Sale of personalty for taxes.

SEC. 3849. Any property distrained for the collection of taxes under the provisions of this chapter shall be sold at public auction, unless the tax and costs accrued be previously paid, and said sale shall take place in the manner now provided by law for collecting delinquent taxes. [S. L. 1884, ch. 93, § 7.]

Grantor and grantee, which shall pay taxes.

SEC. 3850. As between grantor and grantee of any property, real, personal or mixed, where there is no express agreement in writing as to which shall pay the taxes that may be assessed thereon, if such property is conveyed between the first day of January and the first day of April, then the grantee shall pay the same; but if conveyed between the first day of April and the first day of January, the grantor shall pay them. [S. L. 1882, ch. 93, § 8. S. L. 1886, ch. 97, § 19.]

CHAPTER 4.

UNIFORM VALUATION OF LIVE STOCK.

SECTION.
3851. Board of equalization—Meeting—Duties.
3852. Organization of board—Its valuation to control assessments.
3853. Compensation of members and clerk of board.

Board of equalization—Meeting—Duties.

SEC. 3851. The chairmen of the several boards of the county commissioners of the different counties in the territory, or a majority of them, shall constitute a board of equalization for the purpose of fixing a uniform valuation, for the purpose of taxation, upon all neat cattle, horses, mules, sheep and other live stock in the several counties of the territory. Said board shall hold a session, not to exceed three days, at the capital of the territory, beginning on the third Monday in March in each year; *Provided*, A minority of said board shall have the right to adjourn such meeting from day to day for not more than six days. It shall be the duty of said board, or a majority thereof, at such meeting, to fix a uniform valuation for the various classes of neat cattle, horses, mules, sheep and other live stock in the several counties in the territory, and the valuation so fixed by said board shall be the valuation of all such live stock, for the purposes of taxation, for that year. It shall be the duty of the territorial auditor at each session of the board, to furnish the board with an abstract from his books showing the valuations of live stock for the previous year. [S. L. 1886, ch. 34, § 1.]

Organization of board—Its valuation to control assessments.

SEC. 3852. Said board shall organize by selecting one of its members chairman, and shall employ a competent clerk. It shall be the duty of the clerk of said board, immediately upon the adjournment of the board, to transmit to the county clerk of each county a statement of the valuations of the various classes of live stock as fixed by said board. The county clerks of the respective counties shall, immediately upon receipt of the statement of valuations of live stock, as fixed by said board furnish the assessor of his county with a copy of such statement of valuations, and the assessor, in making up his assessment roll for the year, and the county commissioners, in equalizing the assessment shall be governed, as to the valuation of live stock, by the valuation fixed by said board. [S. L. 1886, ch. 34, § 2.]

Compensation of members and clerk of board.

SEC. 3853. The members of said board shall receive for their services the sum of five dollars per day for the time they shall actually serve on said board, which shall in no case exceed three days, and a like compensation for the time necessary in going to and returning from said meetings. They shall also be allowed fifteen cents per mile for the distance actually and necessarily traveled in going to and returning from the place of meeting. The clerk of said board shall receive a compensation for his services as clerk and for notifying the county clerks of the valuations fixed by said board, the sum of ten dollars per day for the time he may be employed, which shall in no case exceed four days.

The compensation herein provided for the members of said board and its clerk shall be paid out of the territoral treasury upon a warrant to be issued by the territorial auditor, upon presentation of a verified bill therefor, certified by the chairman of said board to be correct. [S. L. 1886, ch. 34, § 3.]

CHAPTER 5.

TRANSFER OF CERTAIN DELINQUENT TAXES IN SWEETWATER COUNTY TO FREMONT COUNTY.

SECTION.
3854. Collector of Sweetwater Co. to transmit copy of tax lists to Fremont Co.
3855. Certain delinquent taxes to vest in Fremont Co.
3856. Collector of Fremont Co. to collect delinquent taxes.
SECTION.
3857. Compensation of collector of Sweetwater Co.
3858. Collection of certain delinquent taxes in Sweetwater Co.

Collector of Sweetwater County to transmit copy of tax lists to Fremont County.

SEC. 3854. Within twenty days after the passage of this chapter the tax collector of Sweetwater County shall prepare copies of the tax lists of said Sweetwater County for the years eighteen hundred and eighty-one, eighteen hundred and eighty-two, and eighteen hundred and eighty-three, noting thereon all payments and abatements of the taxes therein named, and he shall affix to each of said tax lists so prepared a certificate stating that the same is a full, true and complete copy of the original tax list, (stating for which year), as the same remains of record in his office, and that all payments and abatements, of taxes for that year are fully noted thereon; and said tax lists when so prepared and certified shall be forthwith transmitted to the tax collector of Fremont County. [S. L. 1886, ch. 94, § 1.]

Certain delinquent taxes to vest in Fremont county.

SEC. 3855. All delinquent taxes appearing on said tax lists which were levied upon real and personal property which was at the time of levying the same located within that portion of Sweetwater County now constituting Fremont County, shall thereupon vest in and become due to the County of Fremont. [S. L., 1886, ch. 94 § 2.]

Collector of Fremont county to collect delinquent taxes.

SEC. 3856. Upon receipt of said tax lists so certified, the tax collector of Fremont County shall proceed forthwith to collect the delinquent taxes, by this chapter vested in Fremont County, in the manner provided by law for the collection of delinquent taxes; *Provided*, That no penalty and no interest shall be collected on said taxes. The certified copies of said tax lists shall be full and sufficient authority for the tax collector of Fremont County to collect the delinquent taxes herein named; *Provided, however*, The tax collector of Fremont County, before he shall undertake to collect any of such delinquent taxes, shall first make or cause to be made an investigation of each delinquent tax hereby transferred and as to such delinquent taxes as shall be found not to have been assessed or levied in accordance with law, the collection thereof shall not be forced by any legal proceedings or by distress; *Provided*, That the board of county commissioners of said county shall have the same authority to abate any of said taxes, and to direct the treasurer to refund any of the same when paid, as said board possesses with relation to other taxes, the same to be done at any regular or special meeting of said board. [S. L. 1886, ch. 94 § 3.]

Compensation of collector of Sweetwater County.

SEC. 3857. Upon delivering the said tax lists, certified as required by this chapter, to the tax collector of Fremont County, the tax collector of Sweetwater County shall receive for the services imposed upon him by this chapter the sum of one hundred dollars, to be paid by the county treasurer of Fremont County upon the order of the board of commissioners of said county. [S. L. 1886, ch. 94, § 4.]

Collection of certain delinquent taxes in Sweetwater County.

SEC. 3858. A certified copy of the tax lists of said Sweetwater County for the years eighteen hundred and eighty-one, eighteen hundred and eighty-two and eighteen hundred and eighty-three shall be full and sufficient authority for the tax collector of Sweetwater County to collect all of such taxes remaining the property of said county after the passage of this chapter, and shown by said lists to have been delinquent taxes for either of said years eighteen hundred and eighty-one, eighteen hundred and eighty-two and eighteen hundred and eighty-three, and said certified copies of said tax list shall be the collector's justification against any irregularity in the proceedings relating to the assessment and levy of taxes for said years. [S. L. 1886, ch. 94, § 5.]

TITLE 44. ROADS AND HIGHWAYS.

CHAPTER 1. ROADS AND BRIDGES.
CHAPTER 2. OBSTRUCTING WATER COURSES.

CHAPTER 1.

ROADS AND BRIDGES.

SECTION.
3859. County commissioners to control roads.
3860. Requisites of road petition.
3861. Notice of presenting petition.
3862. Appointment of viewers—Survey.
3863. Duties, oath and report of viewers—Proceedings by commissioners.
3864. Viewers may administer oaths.
3865. Complaint for damages—Appraisers.
3866. When damages assessed to be paid by county.
3867. Appeal to district court—Costs.
3868. Width of roads.
3869. Petition to change road, and proceedings thereon.
3870. Neglect of duty by viewer—Penalty.
3871. Petition for private road and proceedings thereon.
3872. Gates on private roads.
3873. Report of viewers on private road—Confirmation by commissioners.
3874. Counties to be divided into road districts.
3875. Road supervisor—Election and term of office.
3876. Oath and bond of supervisor.
3877. Tax levy for road purposes—Special road tax.
3878. Refusal to work out special road tax—Penalty.
SECTION.
3879. Supervisor to control labor on roads.
3880. Supervisor to keep roads in repair.
3881. Road ditches—Implements and materials for road work.
3882. Supervisor to remove obstructions.
3883. Certificate for extra labor performed.
3884. Compensation and report of supervisors.
3885. Presumptions in action to recover road tax.
3886. Malfeasance of supervisor—Penalty.
3887. Compensation of surveyor.
3888. Parallel roads—Water roads—Timber roads.
3889. Guide boards to be erected by supervisor.
3890. Fords—Penalty for obstructing same.
3891. Toll bridges not to obstruct fords.
3892. Limitation upon contracting for bridge work.
3893. Obstructing roads or injuring bridge—Penalty.
3894. Restrictions upon damming water in streams.
3895. Penalty for violating last section.
3896. Tax levy.
3897. How fines recovered, etc.
3898. Albany County may build roads outside of county.
3899. To be paid from road fund.

County commissioners to control roads.

SEC. 3859. All county roads shall be under the supervision of the board of county commissioners of the county wherein said road is located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this territory except by authority of the county commissioners of the proper county. [S. L. 1886, ch. 99, § 1.]

Requisites of road petition.

SEC. 3860. All applications for laying out, altering or locating county roads shall be by petition to the county commissioners of the proper county, signed by at least twelve householders of the county residing in the vicinity where said road is to be laid out, altered or located, which petition shall specify the place of beginning, the intermediate points, if any, and the terminus of said road. [S. L. 1886, ch. 99, § 2.]

Notice of presenting petition.

SEC. 3861. When any petition shall be presented for the action of the county commissioners for the laying out, altering or vacating of any county road, it shall be accompanied by satisfactory proof that notice has been given, notifying all persons concerned that application will be made to the county commissioners at their regular session, for laying out, altering or vacating such road, as the case may be. [S. L. 1886, ch. 99, § 3.]

Appointment of viewers—Surety.

SEC. 3862. Upon the presentation of such petition, and proof that notice has been given, as provided in the last section, the county commissioners shall, in their discretion, appoint three disinterested householders of the county as viewers of said road, and the county surveyor to survey the same, if the county commissioners deem it necessary to have a survey made of the same, and shall issue an order directing said viewers and surveyors, if appointed, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view survey if so ordered, and lay out or alter said road. [S. L. 1886, ch. 99, § 4.]

Duties, oath and report of viewers—Proceedings by commissioners.

Sec. 3863. It shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving at least five days previous notice by one of the petitioners, to meet at the time and place specified in the order of the county commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation, faithfully and impartially to discharge the duties of their appointments, shall proceed to view, survey if necessary, and lay out or alter said road as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience, and inconvenience and expense which will result to individuals as well as to the public if such road shall be established and opened or altered. The county surveyor if appointed, shall survey under the direction of the viewers, and shall make out and deliver to one of the viewers a certified return of the survey of said road, and a plat of the same, and the viewers, or a majority of them, shall make and sign a report in writing, stating their opinion in favor of or against the establishment or altering of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, if made, shall be delivered to the county clerk by one of the viewers on or before the first of the session of the board of county commissioners next ensuing; and it shall be the duty of the county commissioners on receiving the report of the viewers aforesaid, to cause the same to be publicly read on each day of the same meeting, and if notice shall have first been personally given of such reading, and the day on which the same shall be read at least ten days before such reading, to all persons owning the property through which said road is proposed to be laid out or altered, and if such notice cannot be personally given on any such person or persons, by reason of his or their absence from the territory, then by publication as is now provided by law for constructive service in cases against non-residents; the notice herein above required shall be a written notice signed by the chairman of the board of county commissioners and attested by the clerk of said county and the seal thereof, directed to such person, advising of said petition to open or alter, as the case may be, a road, describing the same; that said change will affect the interests of such person in and to certain of his real estate, describing it as near as may be, and the time and place when the report of said viewers will be presented and received, and that he can if he so desires be present and object thereto, and if no remonstrance or petition for damages be filed, and the county commissioners being satisfied that such road will be of public utility, will order the report of the viewers' survey and plat to be recorded, and the commissioners shall issue an order directing said road to be opened; upon receiving said order the supervisor of the district in which said road may be located, shall proceed to open said road, and when said road is opened and in condition to be traveled, the county commissioners shall receive the same, after which time said road will be declared a public highway. [S. L. 1886, ch. 99, § 5.]

Viewers may administer oaths.

Sec. 3864. In all cases where any oath or affirmation is required to be taken by any person under the provisions of this chapter, the same may be administered by one of the viewers who has been previously sworn; *Provided*, That it shall not be necessary to survey any county road, new road, or alteration in roads, if the county commissioners so direct. [S. L. 1886, ch. 99, § 6.]

Complaint for damages—Appraisers.

SEC. 3865. If any person through whose lands any county road may be viewed or marked out shall feel that he or she would be injured by the opening of the same, such person may make complaint thereof in writing to the county commissioners at the time the report of the viewers appointed to view said road is received, and if such complaint be made the county commissioners shall appoint three disinterested householders of the county, who shall meet at such time as may be designated by the commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the county commissioners at their next regular session. [S. L. 1886, ch. 99, § 7.]

When damages assessed to be paid by county.

SEC. 3866. If the county commissioners are satisfied that the amount of damages so assessed is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the commissioners shall order the same to be paid to the complainant out of the county road fund; but if in the opinion of the county commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county, they shall refuse to establish the same as a public highway, unless the expenses or damages, or such part thereof as they may think proper, shall be paid by the petitioners. [S. L. 1886, ch. 99, § 8.]

Appeal to district court—Costs.

SEC. 3867. Any complainant who may conceive himself aggrieved by the assessment of damages, as prescribed by the last two sections, may within thirty days after such report is adopted by the county commissioners, appeal therefrom to the district court of the proper county. Such appeal shall be taken to the district court in the same manner as appeals from justices of the the peace, and if the appellant shall fail to recover a judgment for fifty dollars more than the amount appealed from, he shall pay all costs of appeal. [S. L. 1886, ch. 99, § 9.]

Width of roads.

SEC. 3868. All county roads shall shall be not less than sixty nor more than one hundred feet in width, unless the commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in point of width; *Provided*, That in the Counties of Laramie and Crook all county roads shall be not less than sixty feet, nor more than five hundred feet in width as may be authorized by the board of county commissioners of such county; *And provided further*, That in the County of Albany there may be one road leading to the Union Pacific railroad, of not exceeding five hundred feet in width as may be determined by the board of the county commissioners of such county. [S. L. 1886, ch. 99, § 10.]

Petition to change road and proceedings thereon.

SEC. 3869. If any person or persons through whose lands any public highway is or may be established shall be desirous of changing such road through any part of his or their lands, such person or persons may, by petition, apply to the county commissioners of the proper county to permit him or them to turn such road through any other part of his or their lands, on as good ground and without materially increasing the distance, without injury to the public, and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the county commissioners may appoint three disinterested householders as viewers, and the county surveyor, if necessary, who, or a majority of such viewers, shall proceed to review the ground over which the road is proposed to be changed, and ascertain the distance such road will be increased by the proposed alteration and make out a report in writing, stating their opinions as to the utility of making such alterations, and if the viewers, or a majority of them, shall report to the county commissioners that the prayer of the petitioner or petitioners is reasonable, and upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, the commissioners shall declare such new road a public highway and make record thereof, and at the same time vacate so much of the old road as is not embraced in the new, and the person or persons petitioning for the alteration shall pay all costs and expense of view, survey if ordered, and return of such alteration. [S. L. 1886, ch. 99, § 11.]

Neglect of duty by viewer—Penalty.

SEC. 3870. If any viewer or viewers shall refuse or neglect to perform the duties required by this chapter without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding ten dollars, to be recovered by an action before a justice of the peace of the proper county, which fine when collected shall be paid over without delay into the county treasury for the benefit of the road fund. [S. L. 1886, ch. 99, § 12.]

Petition for private road and proceedings thereon.

SEC. 3871. Any person whose land shall be so situated that it has no connection with any public road, may make application in writing to the county commissioners of his county at a regular session, for a private road leading from his premises to some convenient public road, and thereupon the said commissioners shall appoint three disinterested householders of the county as viewers, and cause an order to be issued directing them to meet on a day named in such order to view and locate a private road according to the application, and to assess the damages to be sustained thereby, and after being duly sworn or affirmed, faithfully and impartially to discharge the duties of their appointments, and after at least three days notice given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road thirty feet in width, from certain point on the premises of the applicant to some certain point on the public road, so as to do the least possible damage to the lands through which such private road is located, and they shall also at the same time assess the damages sustained by the person and persons owning such land.. [S. L. 1886, ch. 99, § 13.]

Gates on private roads.

SEC. 3872. The viewers appointed in accordance with the provisions of the preceding section shall have power to determine in all cases whether or no gates shall be placed at proper points on said road, and assess damages in accordance with such determination. [S. L. 1886, ch. 99, § 14.]

Report of viewers on private road—Confirmation by commissioners.

SEC. 3873. The viewers so appointed, or a majority of them, shall make a report to the county commissioners at the next regular session of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages, and if the commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road, and the damages assessed by the viewers, the commissioners shall order such report to be confirmed and declare such road to be a private road, and the same shall be recorded as such; and any person aggrieved by the assessment of damages may appeal, within thirty days, to the district court. [S. L. 1886, ch. 99, § 15.]

Counties to be divided into districts.

SEC. 3874. The county commissioners shall, at their next regular meeting in May, divide their respective counties into road districts, and shall cause a brief description of each road district to be entered on the county records. [S. L. 1886, ch. 99, § 16.]

Road supervisor—Election and term of office.

SEC. 3875. There shall be in each organized county a road supervisor, who shall hold his office for two years, and until his successor is elected or appointed and qualified according to law, and such road supervisor shall be elected or appointed as by law provided in the case of county and precinct officers. [S. L. 1886, ch. 99, § 17.]

Oath and bond of supervisor.

SEC. 3876. Each supervisor shall hold his office for two years, unless sooner removed, and shall take an oath to faithfully discharge the duties of his office, and shall enter into an undertaking to the county with one or more sureties, to be approved by the county commissioners, in any sum specified by them, not to exceed one thousand dollars, to the effect that he shall faithfully account for all moneys collected by him, and perform the duties of his office according to law. The commissioners shall have power at any time to remove from office any supervisor who shall fail, neglect or refuse to perform the duties of his office. [S. L. 1886, ch. 99, § 18.]

Tax levy for road purposes—Special road tax.

SEC. 3877. There shall be levied and collected on all taxable property in the county the sum of not less than one mill nor more than three mills on the dollar for road purposes. Also a special road tax of three dollars on each able-bodied man between the ages of twenty-one and fifty years, residing in the district; *Provided*, That any person liable to pay a special road tax, may work out such tax under the directions of the supervisor of the district where such person resides, and shall be allowed for such work the sum of three dollars per day. The several county treasurers are hereby authorized and empowered to collect all road tax, both special and *ad valorem*, levied in each year as required by law for the collection of revenue; *Provided*, That any person producing the supervisor's certificate for labor done and performed, or for material furnished on any road or bridge by order of the supervisor, shall be allowed the same on his special road tax; *Provided also*, That no special road tax shall be required from any member of any organized fire company of any village or city. [S. L. 1886, ch. 99, § 19.]

Refusal to work out special road tax—Penalty.

SEC. 3878. The supervisor must notify every person within his road district, subject to road labor as aforesaid, to perform one day's work in each year upon the public roads, and if any person subject to road labor as aforesaid shall, after three days notice, either personally or by writing left at his usual place of abode by the supervisor or any other person under his direction, neglect or refuse to attend by himself or suitable substitute, at the time and place designated by the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned to him, every such delinquent shall thereby become liable for the amount of his road tax in money, and if such person has no real or personal property assessed in his name, it shall be the duty of the surpervisor to make complaint before the nearest justice of the peace, setting forth the facts of such notice and refusal to perform the labor or to pay the money, when, if such charge be sustained after a hearing, the delinquent shall be deemed guilty of a misdemeanor, and shall be fined twice the amount due from him for road tax, together with all costs. Such fine to be collected as in ordinary criminal actions, and be paid to the supervisor for the use of the road fund in his district. [S. L. 1886, ch. 99, § 20.]

Supervisor to control labor on roads.

SEC. 3879. Every person notified to labor on the public roads, under the provisions of this chapter, shall be required to appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; *Provided*, Such person is the owner of such tools and implements, and work industriously and diligently, doing at least eight hours faithful labor in each day at such work and in such manner as shall be directed by the supervisor, and such supervisor may, if he deem it necessary, order any resident of his district, from whom road work or tax is due and owing, to furnish a team of horses, mules or oxen, and wagon, cart, scraper or plow, to be employed or used on the roads under the direction of the supervisor, and shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plow, which shall be allowed by the board of county commissioners, on such order of the supervisor, out of the general road fund of the county, less the special road tax due from such person. [S. L. 1886, ch. 99, § 21.]

Supervisor to keep roads in repair.

SEC. 3880. The supervisor of roads shall open, or cause to be opened, all public roads which may have been, or may hereafter be, laid out and established according to law, in any part of his road district, and shall keep the same in good repair; and if the labor in his district is not sufficient for that purpose, the supervisor shall have power and authority to call out all persons liable to road tax for one or more days labor, and if such labor is not sufficient, the board of commissioners are hereby authorized, at their discretion, to appropriate from the general road fund any amount they see fit for the use and benefit of such road district. [S. L. 1886, ch. 99, § 22.]

Road ditches--Implements and materials for road work.

SEC. 3881. The road supervisor shall have authority to cut, open or construct such drains or ditches as he shall deem necessary for the making and preserving of such roads, doing as little injury as may be to the lands, and any person stopping or obstructing the drains or ditches so made, shall forfeit the sum of twenty dollars, to be recovered by the supervisor in a civil action, as before provided. If any person shall feel aggrieved by the act of any supervisor, cutting or carrying away any timber or stone, as aforesaid, he may make complaint in writing to the county commissioners, who shall allow any damages they may see fit, and pay the same out of the road fund. The county commissioners may authorize the supervisors to purchase any plows, scrapers, or other implements that they may think proper for the use of any road district, and pay for the same out of the general road fund. [S. L. 1886, ch. 99, § 23.]

Supervisor to remove obstructions.

SEC. 3882. If at any time during the year any public road shall become obstructed by snow, or from any other cause, or any bridge shall need repairing or become dangerous for the passage of teams or travelers, the supervisor of the road, upon being notified thereof, shall forthwith cause such obstruction to be removed or bridge repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction, or to repair such bridge, and all persons so ordered out shall, after having received one days notice, be subject to the same restrictions as if ordered out under the provisions of section thirty-eight hundred and seventy-eight. [S. L. 1886, ch. 99, § 24.]

Certificate for extra labor performed.

SEC. 3883. In all cases under the preceding section, where any person has performed labor on the public roads in removing obstructions, or repairing bridges, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such district on any subsequent year for the amount of labor specified therein. [S. L. 1886, ch. 99, § 25.]

Compensation and report of supervisors.

SEC. 3884. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this chapter, the sum of five dollars, to be paid out of the general road fund, and it shall be the duty of the supervisor to report to the board of county commissioners at their regular meeting in December in each year, a sworn statement of all moneys collected by them; they shall also present a sworn statement of the number of days work done in their district each year, and by whom performed. [S. L. 1886, ch. 99, § 26.]

Presumptions in action to recover road tax.

SEC. 3885. In an action by the supervisor to recover delinquent road tax, herein provided, the presumption shall be that the defendant was duly notified to work the road, and failed and neglected so to do, and that he had no real or personal property listed to him during the current year. No property is exempt from execution and sale for a delinquent road tax. [S. L. 1886, ch. 99, § 27.]

Malfeasance of supervisor—Penalty.

SEC. 3886. Any supervisor of roads who shall neglect or refuse to perform the several duties enjoined upon him by the provisions of this chapter, or who shall under any pretense whatever give or sign any receipt or certificate for money received or labor performed, unless the money shall have been received or the labor performed prior to the giving or signing of such receipt or certificate, shall forfeit for each offense not less than five nor more than twenty dollars, to be recovered before any court having jurisdiction, and it shall be the duty of the county commissioners to sue for the same in the name of the county. [S. L. 1886, ch. 99, § 28.]

Compensation of surveyor.

SEC. 3887. The county surveyor, while employed under the provisions of this chapter, shall receive as compensation the sum of eight dollars per day, and each viewer the sum of five dollars per day for each day necessarily employed in such labor, surveying or laying out roads, under the supervision of the county commissioners. [S. L. 1886, ch. 99, § 29.]

Parallel roads—Water roads—Timber roads.

SEC. 3888. County roads running parallel shall not be nearer than one mile, and upon the presentation of a petition signed by at least five freeholders of any neighborhood praying for passage to the various water courses for stock purposes, the commissioners may, at their discretion, establish such passageway as provided for in section thirty-eight hundred and seventy-three. This section shall also apply to the opening and establishment of neighborhood roads running to timber. [S. L. 1886, ch. 99, § 30.]

Guide boards to be erected by supervisor.

SEC. 3889. Every supervisor shall erect or cause to be erected and keep up at the forks of every highway and every crossing of public roads within his district, a guide or finger board containing an inscription in legible letters directing the way and specifying the distance to the next town or public place situated on each road respectively, subject to the board of county commissioners. [S. L. 1886, ch. 99, § 31.]

Fords—Penalty for obstructing same.

SEC. 3890. When any public road heretofore laid out or traveled as such or hereafter to be laid out or traveled as a public road, crosses any stream of water, and such stream is at any time during the year fordable where such road crosses or shall cross the same, the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled leading to and from such highway, to and from such ford, shall be deemed and taken to be a part, portion and continuation of such public road and highway. Any person who shall obstruct any such ford or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, embankment or other obstruction in such stream, or any wing dam or other obstruction upon the banks or edge of such stream, for the purpose of raising the water of such stream upon said ford so as to render the said ford impassable or more difficult of passage than heretofore, or who shall maintain any such dam, wing dam, embankment or obstruction heretofore erected, after being requested by the road supervisor or other authorized person of the district wherein the same is situated, to remove or abate the same, shall be liable to the same penalties as for obstructing a public highway. [S. L. 1886, ch. 99, § 32.]

Toll bridges not to obstruct fords.

SEC. 3891. No person or persons, company or corporation, shall, upon any pretense or authority, be permitted to erect a toll bridge over any stream at or upon any public ford or road crossing, or so near thereto as by the abutments, embankments or piers of such bridge, to obstruct or render impassable the said ford, or the road leading thereto. [S. L. 1886, ch. 99, § 33.]

Limitation upon contracting for bridge work.

SEC. 3892. When any bridge is to be built upon any public highway, the estimated cost of which shall exceed fifty dollars, the work shall be given out, and such bridge constructed by contract, and the county commissioners shall cause notices of such contract to be let to be published for three consecutive weeks in any newspaper published within the county, or if no newspaper be published in the county they shall cause written or printed notices of such contract to be let, to be posted in two of the most public places in such county, and one such notice on the door of the court house, or of the building used as court house in such county, thirty days before the letting of such contract, and all such contracts shall be awarded by the county commissioners to the lowest responsible bidder, and the commissioners are hereby authorized to contract for other necessary improvements upon the public roads and highways in the same manner as provided in the case of bridges; *Provided*, That when any bridge is to be built or other improvement made as provided in this section, the county commissioners may award such contract in such manner as to them shall appear just and equitable for the county. [S. L. 1886, ch. 99, § 34.]

Obstructing roads or injuring bridge—Penalty.

SEC. 3893. If any person shall wilfully erect or cause to be erected or placed within or upon any highway or public road any obstruction, or shall wilfully obstruct or encroach upon any public highway by felling trees or placing stones therein, or by erecting any fence, house or other structure therein, and if any person shall tear down, burn or destroy, or in any way maliciously or wilfully injure any bridge upon any public highway, every person so offending shall pay a fine of not less than twenty-five dollars nor more than one hundred dollars for any obstruction, and a fine of ten dollars for each day that such obstruction shall be suffered to remain in such road after notice shall have been given for the removal thereof; and for wilful or malicious injury to any bridge as provided in this section, the penalty shall be four-fold the cost or estimated cost of repairing such damage, or imprisonment therefor at the rate of one days confinement for each two dollars of such damage. [S. L. 1886, ch. 99, § 35.]

Restrictions upon damming water in streams.

SEC. 3894. No person or persons, company or corporation, shall, by virtue of any franchise, charter or law granted or made for any mining, ditch, milling, irrigating or other purpose whatsoever, be permitted or allowed to dam the water or waters of any stream in this territory so that the water or waters raised by such damming shall flow back to a higher point or mark on the margin of such stream than high water-mark, or so that the water thus dammed shall overflow any public road or highway, or undermine, weaken or damage any bridge, walls or embankments of such road, nor shall any person, company or corporation, owning or controlling any ditch, allow any waste water from the same to flow upon or across any established road or highway. [S. L. 1886, ch. 99, § 36.]

Penalty for violating last section.

SEC. 3895. Any person or persons, company or corporation, violating the provisions of the last preceding section, shall be liable to a fine not to exceed one hundred dollars, and shall also be liable to the party injured for any damages resulting therefrom. [S. L. 1886, ch. 99, § 37.]

Tax levy.

SEC. 3896. The board of county commissioners of each county shall levy a tax for the purposes of this chapter as is provided and authorized by law, providing for a territorial and county revenue. [S. L. 1886, ch. 99, § 38.]

How fines recovered, etc.

SEC. 3897. All fines, penalties and forfeitures provided by this chapter, when not otherwise specified, shall be recoverable by action of debt in the name of the people of Wyoming Territory, or by indictment before any court of competent jurisdiction. All such fines, penalties and forfeitures shall be paid into the county treasury, and shall become a part of the fund for the construction and repair of roads and bridges. [S. L. 1886, ch. 99, § 39.]

Albany County may build roads outside of county.

SEC. 3898. The board of county commissioners of Albany County are hereby authorized and empowered to expend annually, as in their judgment they may deem necessary for the public good, a sum or sums of money, not exceeding fifteen hundred dollars in any one year, upon repairs of existing roads and bridges, and upon making new roads and bridges, at places outside of the boundaries of said Albany County, and of the Territory of Wyoming; *Provided*, That said sums so expended shall be taken only from any surplus that may be left unexpended in the road and bridge fund of said county, after providing for the necessary expenditures on roads and bridges within said county; *Provided also*, That said sums shall only be expended along roads that form a continuous line from some legally laid out, open and traveled road within and to the boundaries of said county. [S. L. 1884, ch. 4, § 1.]

To be paid from road fund.

SEC. 3899. The sums expended, as provided in the preceding section, shall be paid by warrants issued by said board of county commissioners, the same as for other indebtedness, which shall be drawn against the road and bridge fund of said county. [S. L. 1884, ch. 4, § 2.]

CHAPTER 2.

OBSTRUCTING WATER COURSES.

SECTION.
3900. Restrictions upon constructing dams and booms.
3901. Certain booms declared unlawful.
3902. Ditch owner to maintain head-gate.
SECTION.
3903. Liability for failure to maintain head-gate.
3904. Water courses declared public highways.

Restrictions upon constructing dams and booms.

SEC 3900. No dam or boom shall hereafter be constructed or permitted on any river of sufficient size for floating or driving logs, timber or lumber, and which may be used for that purpose, unless said dam or boom shall have connected therewith a sluice-way, lock, or other fixture sufficient and so arranged as to permit logs, cross-ties, wood, telegraph poles, timber and lumber to pass around, through, or over said dam or boom, without unreasonable delay or hindrance. [C. L. 1876, ch. 78, §§ 1 and 2.]

Certain booms declared unlawful.

SEC. 3901. Any boom or weir now in or over any river as aforesaid, that is so constructed as to prevent the free passage of logs or lumber, is hereby declared a public nuisance, which shall be abated unless a suitable sluice-way, lock or passage as above provided, be made thereon as aforesaid, within thirty days after written notice given by any person interested, and any person or persons so owning, holding or occupying said boom or weir shall be liable to pay five dollars for every day the same shall be suffered to remain in or over said river, after having had thirty days notice to remove said nuisance, (which may be recovered before any justice of the peace having jurisdiction in the case, and the amount so recovered shall be collected by said justice and paid into the county treasury of the county where such offense was committed, for the use of common schools therein,) and shall furthermore be liable for any damages sustained by individuals by reason of said nuisance. [C. L. 1876, ch. 78, § 3.]

Ditch owner to maintain head-gate.

SEC. 3902. Any person or persons, corporation or corporations, using water through any ditch or canal now constructed, or which may be hereafter constructed, under the laws of Wyoming Territory; or any person or persons, corporation or corporations using water through any natural ditch or slough from any creek or river in this territory which is of sufficient size for floating or driving logs, lumber, timber railroad ties, poles, rails, posts or firewood, and which may be used for that purpose, shall erect and maintain in good order, a head-gate across said ditch, canal or slough at or near the bank of the creek or river where such ditch, canal or slough opens out therefrom, sufficient to prevent logs, lumber, timber, railroad ties, poles, rails, posts or firewood from floating into any such ditch, canal or slough; *Provided*, That the foregoing shall not apply to natural sloughs that water will run through without being dammed or flumed. [S. L. 1882, ch. 67, § 1.]

Liability for failure to maintain head-gate.

SEC. 3903. If any person or persons, corporation or corporations, shall fail or neglect to erect and maintain a sufficient head-gate as required by the provisions of the preceding section, such person or persons, corporation or corporations, shall be held liable for any and all damages sustained by any person or persons, corporation or corporations through such failure or neglect; said damage to be recovered in any court having competent jurisdiction. [S. L. 1882, ch. 67, § 2.]

Water courses declared public highways.

SEC. 3904. All creeks and rivers within the Territory of Wyoming of sufficient size for floating or driving logs, timber or lumber, and which may be used for that purpose, are hereby declared to be public highways, so far as to prevent obstructions to the free passage of logs, cross ties, wood, telegraph poles, timber or lumber down said stream, or either of them. [C. L. 1876, ch. 78, § 1.]

TITLE 45. SCHOOL LAWS.

CHAPTER 1. SUPERINTENDENT OF PUBLIC INSTRUCTION—TEACHERS' INSTITUTE.
CHAPTER 2. DUTIES OF COUNTY SUPERINTENDENT.
CHAPTER 3. SCHOOL DISTRICTS—ORGANIZATION AND POWERS.
CHAPTER 4. DISTRICT OFFICERS AND THEIR DUTIES.
CHAPTER 5. SCHOOL TAX AND THE COLLECTION THEREOF.
CHAPTER 6. MISCELLANEOUS PROVISIONS.

CHAPTER 1.

SUPERINTENDENT OF PUBLIC INSTRUCTION—TEACHERS' INSTITUTE.

SECTION.
3905. Librarian to be superintendent of public instruction.
3906. General duties of superintendent.
3907. Disposition of donated books, maps, etc.
3908. Superintendent may grant teachers' certificates.
3909. Teachers' honorary certificate.
3910. Teachers' institute—Traveling expenses of principals—Notice of meeting.

SECTION.
3911. Institute shall provide uniform system of education, etc.
3912. Teachers shall attend institute—Payment of expenses.
3913. When teacher excused from attending institute.

Librarian to be superintendent of public instruction.

SEC. 3905. The territorial librarian shall be, *ex-officio*, superintendent of public instruction, and shall perform all the duties which by law pertain to that office. [C. L. 1876, ch. 103, p. 526, § 1.]

General duties of superintendent.

SEC. 3906. The duties of superintendent shall be as follows: He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties, each year, separately, and hold the same in readiness to be exhibited to the governor, or to any committees of either house of the legislative assembly; and shall keep a fair record of all matter pertaining to the business of his office. He shall have a general supervision of all the district schools of the territory, and shall see that the school system is, as early as practicable, put into uniform operation. He shall prepare and have printed suitable forms for all reports required by this title, and shall transmit the same, with such instructions in reference to the course of studies as he may judge advisable, to the several officers entrusted with their management and care. He shall make all further rules and regulations that may be necessary to carry the law into full effect, according to its spirit and intent, which shall have the same force and effect as though contained herein. He shall make a report to the legislative assembly on the first day of each regular session thereof, exhibiting the condition of public schools, and such other matters relating to the affairs of his office as he may think proper to communicate. [C. L. 1876, ch. 103, p. 526. § 2.]

Disposition of donated books, maps, etc.

SEC. 3907. One copy of all books, maps, charts or school apparatus, which may be received by the superintendent of public instruction, from publishers, inventors or manufacturers, shall be placed by him in the public library of this territory. [C. L. 1876, ch. 103, p. 526, § 3.]

Superintendent may grant teachers' certificates.

SEC. 3908. The superintendent of public instruction shall also have power to grant certificates of qualification to teachers of proper learning and ability, to teach in any public school in the territory, and to regulate the grade of county certificates. [C. L. 1876, ch. 103, § 4.]

Teachers' honorary certificate.

SEC. 3909. Whenever any person has been employed as teacher of any of the public schools of the territory, for a term of five successive years, the territorial teachers' institute, by a majority vote, may instruct the territorial superintendent of public instruction to grant to such person, an honorary certificate of qualification, which certificate when granted shall be valid to him or her in any one of the counties of the territory, for a term of five years. [S. L. 1882, ch. 101, § 4.]

Teachers' institute—Traveling expenses of principals—Notice of meeting.

SEC. 3910. The territorial superintendent of public instruction, together with the several county superintendents and the principals of all graded schools in this territory, shall hold, annually, at some convenient place, a territorial teachers' institute for the instruction and advancement of teachers; said institute shall continue not less than four days nor more than ten, and it shall be held at such time and place as said institute may determine; a majority of all the county superintendents and principals of graded schools, together with the territorial superintendent of public instruction, shall constitute a quorum authorized to transact business, but such institute shall be authorized to act in the absence of the territorial superintendent. It shall be the duty of said institute, during its sessions, to decide upon the manner and time in which shall be held a county institute in each county in the territory during the year, under the direction of the territorial superintendent, or some person by him specially authorized in writing. It shall be the duty of all principals of graded schools in this territory to attend such institute, and upon the presentation of a certificate from the territorial superintendent as to the actual amount of the cost of their traveling expenses, it shall be the duty of the territorial auditor to audit and allow such account. The territorial superintendent of public instruction shall cause a notice of the meeting of the annual teachers' institute to be published in one paper in each county for two weeks immediately preceding the meeting of said territorial teachers' institute, and upon presentation of a bill for publishing the same, certified to by the territorial superintendent of public instruction, to the territorial auditor, a warrant shall be drawn on the territorial treasurer for the same. [S. L. 1877, p. 115, § 1, and p. 93, § 4.]

Institute shall provide uniform system of education, etc.

SEC. 3911. The territorial teachers' institute shall, during its sessions, discuss and decide upon a series of books and a system of education which shall be uniform throughout the territory, and it shall be the duty of the territorial superintendent to have the books and system so decided upon introduced and used in all the schools in the territory, to the exclusion of all others; *Provided always*, That provision shall be made for instructing all pupils in every school throughout the territory in physiology and hygiene. [S. L. 1886, ch. 93, § 4.]

Teachers shall attend institute—Payment of expenses.

SEC. 3912. It shall be the duty of all teachers employed in the public schools of the territory to attend the annual sessions of the territorial teachers' institute; and upon the presentation of a certificate from the territorial superintendent of public instruction as to the actual amount of the cost of fare to and from the institute, it shall be the duty of the territorial auditor to audit and allow the same, and the territorial treasurer shall pay said account out of public funds appropriated for that purpose. [S. L. 1882, ch. 101, § 1. S. L. 1884, ch. 94, § 1.]

When teacher excused from attending institute.

SEC. 3913. The territorial superintendent of public instruction may grant to any teacher employed in any public school of the territory, leave of absence from the session of any annual meeting of the institute, in case of sickness, or for other valid reason; *Provided*, That the request for such leave of absence be made in writing, and filed in the office of the superintendent; *And, provided further*, That when such leave of absence is granted, no expense shall accrue to the territory. [S. L. 1882, ch. 101, § 2.]

CHAPTER 2.

DUTIES OF COUNTY SUPERINTENDENT.

SECTION.
3914. Enumeration of duties and powers.
3915. Failure to make report—Penalty.
3916. May grant teacher's certificate for two years—Renewals.

SECTION.
3917. Supervisory and appellate authority.

Enumeration of duties and powers.

SEC. 3914. The duties of the county superintendent of schools shall be as follows: He shall on the first Monday in October of each year transmit to the superintendent of public instruction a report containing an abstract of the several particulars set forth in the reports of the district clerks, together with a statement of the financial affairs of his office and such suggestions as he may think proper relative to the schools of his county. He shall distribute to the district within his county such blank forms, circulars and other communications as may be transmitted to him for that purpose by the superintendent of public instruction. On the first Monday in December annually he shall apportion the county school tax and all money in the county treasury belonging to the county school fund in the following manner: Each school district in his county shall be apportioned the sum of one hundred and fifty dollars for the payment of teachers in such district, and all moneys remaining after such apportionment shall be apportioned to each district *pro rata*, according to the number of pupils in attendance in the schools of said district reported to him by the several district clerks; but no district shall be entitled to the amount of one hundred and fifty dollars for the payment of teachers beside the *pro rata* apportionment as provided in this section when there are less than eight scholars of school age in said district; and he shall record a statement thereof in his office, and he shall also notify the county treasurer of such apportionment. He shall immediately draw an order on the county treasurer in favor of the treasurer of each district for the amount of its proportion, and transmit the same to the treasurer of the district; *Provided*, Such district treasurer shall have given his official bond, which draft the county treasurer shall pay to the district treasurer on presentation of the draft properly indorsed. He shall divide the settled parts of the county into school districts, and may alter and change the boundaries of districts thus formed from time to time as the convenience of the inhabitants of the aforesaid districts may require, and shall proceed to make such change at any time when petitioned by two-thirds of the legal voters of any district. He shall examine every person offering himself or herself as teacher of public schools, and if in his opinion such person is qualified to teach a public school, shall give him or her a certificate authorizing him or her to teach a public school in his county for one year. Whenever practicable, the examinations of teachers shall be competitive, and the certificate shall be granted according to the qualifications of the applicant. He shall have the general superintendence of the schools in his county, and shall visit each school at least once each term, and shall have power to dismiss all teachers he may find to be incompetent. [S. L. 1886, ch. 62, § 1.]

Failure to make report—Penalty.

SEC. 3915. Should he fail to make his reports, as required in the foregoing section, he shall forfeit the sum of one hundred dollars, and suit shall be brought on his official bond for the collection of the same, with damages, by the prosecuting attorney. [C. L. 1876, ch. 103, § 8.]

May grant teacher's certificate for two years—Renewals.

SEC. 3916. The county superintendent of any county in the territory may if in his opinion the interest of the schools will be as well served, grant a certificate to any person of requisite ability and qualification, for two years or during his term of office, or may renew a certificate previously given to such person without a re-examination. [S. L. 1882, ch. 101, § 3.]

Supervisory and appellate authority.

SEC. 3917. He shall see that the annual reports of the clerks of the several school districts in his county are made correctly and in due time, and shall hear and determine all appeals from the decision of the district boards. [C. L. 1876, ch. 103, § 9.]

CHAPTER 3.

SCHOOL DISTRICTS—ORGANIZATION AND POWERS.

SECTION.

3918. Notice of formation of new district.
3919. Appeal from superintendent on formation of district.
3920. Qualifications of voters.
3921. First election of trustees—Officers of district.
3922. Election of trustees where number increased to six.
3923. School district seal.
3924. Oath of directors.
3925. School district to be body corporate etc.
3926. Regular meetings of district.
3927. Powers of district meeting.
3928. Objects in voting money to be designated.
3929. Meeting may adopt rules of order.
3930. Transfer of school funds.
3931. Manner of conducting elections of trustees
3932. Qualifications of electors in voting for trustees.
3933. Annual election of trustees — District officers.
3934. Directors shall qualify.

SECTION.

3935. Meetings of board.
3936. Powers and duties of district board.
3937. Authority of board to admit or remove scholars.
3938. When board to advertise for bids before contracting.
3939. Settlement with treasurer—Report to district meeting.
3940. Visiting committee.
3941. Auditing and payment of demands.
3942. Special district meetings—Requisites of notice.
3943. Term of existing appointees to fill vacancies.
3944. Vacancy in board, how filled.
3945. Bond of district treasurer.
3946. Establishment of high schools.
3947. Separate school for colored children.
3948. Employment and payment of teachers.
3949. School age—Compulsory education.
3950. Liability of parents and guardians—Authority of police officers.

Notice of formation of new district.

SEC. 3918. Whenever a school district shall be formed in any county, the county superintendent of schools in such county shall, within fifteen days thereafter, prepare a notice of the formation of such district, describing its boundaries and stating the number thereof, and appointing a time and place for the district meeting. He shall cause the notice, thus prepared, to be posted in at least five public places in the district, at least ten days before the time appointed for such meeting; and when a joint district is derived from portions of two or more counties, the county superintendents of each county, from which any portion of the new district is taken, shall unite in giving the customary notices, and the new district shall be numbered by the superintendent of the county having the highest number of districts. [C. L. 1876, ch. 103, § 10.]

Appeal from superintendent on formation of district.

SEC. 3919. A majority of the voters in any school district, being dissatisfied with the formation of any school district, shall have the right to appeal from the superintendent to the board of county commissioners, and from the board of county commissioners to the superintendent of public instruction. [C. L. 1876, ch. 103, § 11.]

Qualifications of electors.

SEC. 3920. All citizens over the age of twenty-one years, who have resided for thirty days within such district, and who are liable to pay school tax therein, or in the county and none others, shall be deemed qualified electors at school meetings held within such district; *Provided*, That, after the first year of the organization of any school district, no person shall be deemed a qualified elector at any such meetings, who, being liable to pay a school tax therein, or in the county in the year preceding, hath failed to pay the same; *Provided further*, That the qualifications of a voter at regular school district elections for district trustees shall be as provided in section thirty-nine hundred and thirty-two. [C. L. 1876, ch. 103, § 12. S. L. 1886, ch. 93, § 2.]

First election of trustees—Officers of district.

SEC. 3921. The qualified electors of a district, when assembled in accordance with the notice required in section thirty-nine hundred and eighteen, shall organize by appointing a chairman and secretary who shall act as judges of the election, and the name of each elector shall be recorded by the secretary. They shall then, by ballot, elect three trustees, one to hold his office until the next succeeding annual district election, one to hold his office until the second succeeding district election, and one to hold office until the third succeeding annual election; they shall hold their office during the terms for which they are elected respectively, and until their successors are elected and qualified. The trustees shall constitute a board of directors for the district, and shall, as soon as they are qualified, choose from their number, a director, treasurer and clerk of the district. [C. L. 1876, ch. 103, § 13.]

Election of trustees where number increased to six.

SEC. 3922. In all school districts in this territory containing a population of two thousand or more, and in which the number of trustees has been increased to six as provided by law, at each annual election there shall be elected two trustees who shall hold office until the third annual election after the time of their election. [S. L. 1879, ch. 63, §§ 1 and 2.]

School district seal.

SEC. 3923. It shall be the duty of every board of school directors so increased to six members, to provide at the expense of their district, and for said district, a seal, upon which shall be engraved the words "School District No. ———, ——— Co., Wyo. Ter." stating the number of the district and the county in which it is situated. The seal shall be in possession of the clerk of the district. It shall be affixed to all communications or notices required by law to be sent or published by such school board, and to all warrants drawn upon the treasurer of the district. [S. L. 1879, ch. 63, § 4.]

Oath of directors.

SEC. 3924. All directors shall, within ten days after their election, appear before some justice of the peace, and take an oath for the faithful performance of their duties; and in case they fail to do so, they shall each forfeit the sum of twenty-five dollars for the use of the school district. [C. L. 1876, ch. 103, § 14]

School district to be body corporate, etc.

SEC. 3925. Each school district formed under the provisions of this title, is hereby declared to be a body corporate by the name and style of School District No. ——, in the County of ———, and Territory of Wyoming; and in that name it may hold property, and be a party to suits and contracts. [C. L. 1876, ch. 103, § 15.]

Regular meetings of district.

SEC. 3926. The regular meeting of each school district shall be held on the first Monday of May of each year. And, when present, the director and clerk shall preside as chairman and secretary of such meeting. [C. L. 1876, ch. 103, § 16.]

Powers of district meeting.

SEC. 3927. The qualified electors of the district, when assembled, shall have power:

First—To appoint a chairman and secretary, in the absence of the regular officers;

Second—To adjourn from time to time, as occasion may require;

Third—To determine the number of schools which shall be established in the district, and the length of time each shall be taught;

Fourth—To fix the site of each school house, taking into consideration in doing so, the wants and necessities of the people of each portion of the district;

Fifth—To vote such sum of money as the meeting shall deem sufficient for any of the following purposes: To supply any deficiency in the fund for the payment of teachers; to purchase or lease a suitable site for a school house, or school houses; to build, rent, or purchase, a school house or school houses, and to keep in repair and furnish the same with the necessary fuel and appendages; for procuring libraries for the schools, books and stationery for the use of the board and district meetings; for purchasing books for indigent scholars, and to defray all other contingent expenses of the district; *Provided*, That the sum of money so voted shall not exceed three mills on the dollar of all taxable property in each school district; *And*, *provided further*, That in Albany County, school district number one, and in Uinta County, the amount of money that may be voted shall not exceed the sum of five mills on the dollar of the assessed valuation of all the taxable property;

Sixth—To direct the sale or other disposition to be made of any school house, or the site thereof, and of such other property, real or personal, as may belong to the district; and to direct the manner in which the proceeds arising therefrom shall be applied;

Seventh—To vote a sum not exceeding one hundred dollars in any one year, to procure a district library, consisting of such books as they may direct any person to procure;

Eighth—To delegate any or all powers contained in the foregoing specifications to the district board;

Ninth—To transact generally such business as may tend to promote the cause of education in accordance with the provisions of this chapter. [C. L. 1876, ch. 103, § 17. S. L. 1886, ch. 75, § 1.]

Objects in voting money to be designated.

SEC. 3928. In voting money, the district meetings shall designate the respective objects for which the same is raised, and the amount to be raised for each object, and the aggregate amount shall be assessed and collected, as provided in this title. [C. L. 1876, ch. 103, § 18.]

Meeting may adopt rules of order.

SEC. 3929. They may adopt rules of order, not incompatible with the provisions of this chapter and the instructions of the superintendent of public instruction, for the government of district meetings, and may alter and change the same from time to time as occasion may require, and may prescribe the manner of taking the sense of the meeting upon any question; *Provided*, That the last specification shall not apply to the election of officers. [C. L. 1876, ch. 103, § 19.]

Transfer of school funds.

SEC. 3930. In all cases where there are moneys belonging to the school house fund, remaining in the hands of the district treasurer of any school district, and the board of directors thereof are satisfied that such moneys are not required to build a school house, or school houses, in said district, or repair or furnish the same, such moneys may be transferred and accredited to the teachers' fund, and applied to the payment of teachers. And the board may also in like manner transfer a surplus of the teachers' fund to the fund for building school houses when required. [C. L. 1876, ch. 103, § 20.]

Manner of conducting elections of trustees.

SEC. 3931. At the regular district meeting of school districts in each year, at the time now provided by law for the election of trustees, such district meeting shall be opened by proclamation of the trustees, at the hour of ten o'clock, a. m., of such day, and thereupon there shall be elected, by a majority vote of the duly qualified electors then present, three judges and two clerks of the election; *Provided*, That the persons elected as judges and clerks must possess the qualifications of electors at such meeting. The duties of such judges and clerks, when so chosen and elected, shall be as now provided by law for judges and clerks of general elections in Wyoming Territory. Ballot boxes of the kind used for general elections shall be provided by the board of trustees of each school district. The judges so selected and chosen shall take charge of such ballot box, and shall receive and deposit the votes of electors therein, and shall proceed with the election of school trustees, in all respects as is now provided for the election of county officers by the general laws of the territory, and shall conduct said election conformably thereto as nearly as practicable. The polls shall be opened at ten o'clock, a. m., or as soon thereafter as said judges and clerks can be chosen, and closed at four o'clock, p. m., of said day. [S. L. 1886, ch. 93, § 1.]

Qualifications of electors in voting for trustees.

SEC. 3932. Every legal voter of this territory. who shall have been a *bona fide* resident of said district for three months next preceding any such district election, and who has paid a poll tax for the support of common schools within the territory for the preceding year, shall be entitled and qualified to vote at such school district election for district trustees. [S. L. 1886, ch. 93, § 2.]

Annual election of trustees—District officers.

SEC. 3933. Except as otherwise provided by law, there shall be elected, in each organized school district, at the regular annual district meeting, on the first Monday of May of each year, one trustee, who shall hold his office for three years, and until his successor is duly elected and qualified. If, for any reason, the annual election should not be held at the regular meeting, a special meeting for that purpose may be held. The trustees, together, constitute a board of directors for the district, and shall elect from their number a director, treasurer and clerk of the district; and at the first annual election, there shall be three trustees elected, one to hold his office for the term of three years, and one to hold for the term of two years, and one for the term of one year, and thereafter there shall be one trustee elected annually for the term of three years, and thereafter at each of such meetings, one trustee shall be elected as aforesaid, as successor to the out-going members of the board. [C. L. 1876, ch. 103, § 21. S. L. 1879, ch. 63, § 2.]

Directors shall qualify.

SEC. 3934. Said directors shall qualify in the manner prescribed for directors elected upon the formation of a new school district; and in case they refuse or neglect so to do, they shall be subject to the same penalty. [C. L. 1876, ch. 103, § 22.]

Meetings of board.

SEC. 3935. The board of directors may hold such regular, special, or adjourned meetings as they may from time to time determine. [C. L. 1876, ch. 103, § 23.]

Powers and duties of district board.

SEC. 3936. The district board shall make all contracts, purchases, payments and sales, necessary to carry out every vote of the district, for procuring any site for a school house, renting, repairing or furnishing the same, and disposing thereof, or for keeping a school therein, and performing such other duties as may be delegated to them by the district meeting. [C. L. 1876, ch. 103, § 24.]

Authority of board to admit or remove scholars.

SEC. 3937. The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct; and when scholars are admitted from other districts the district board may in their discretion, require a tuition fee from such scholars. [C. L. 1876, ch. 103, § 25.]

When board to advertise for bids before contracting.

SEC. 3938. Whenever any school house is to be built or any repairs, addition or improvement costing more than two hundred dollars made to any school house or district property, the board of directors of the district shall advertise for bids for such work, and in all cases contract the same to the lowest responsible bidder. [S. L. 1886, ch. 93, § 8.]

Settlement with treasurer—Report to district meeting.

SEC. 3939. They shall, from time to time, examine the books and accounts of the treasurer, and make settlement with him, and shall, at each regular meeting of the district, present to the same a full statement of the receipts and expenditures of the district, and such other matters as may be deemed important. [C. L. 1876, ch. 103, § 28.]

Visiting committee.

SEC. 3940. They shall appoint a committee from their own body to visit the respective schools of the district monthly, and to aid the teachers in establishing and enforcing rules for the government of schools, and see that the teachers keep a correct list of the pupils, the time which they attend school, the branches of learning which each is studying, and such other matters as may, in the opinion of the board, tend to promote the welfare of the school. [C. L. 1876, ch. 103, § 29.]

Auditing and payment of demands.

SEC. 3941. They shall audit and allow all just claims against the district, and the directors shall draw an order for all demands thus audited, on the district treasurer. [C. L. 1876, ch. 103, § 30.]

Special district meetings—Requisites of notice.

SEC. 3942. They shall, upon the written request of five legal voters of the district, or, whenever they deem it expedient, call special meetings thereof; but in all such cases, the notice of such meeting shall clearly state the precise object for which it is called, and the time and place at which it is to be held. [C. L. 1876, ch. 103, § 31.]

For notice of district meetings, see § 3956.

Term of existing appointees to fill vacancies.

SEC. 3943. In case a vacancy in any district school board, caused by the resignation, death or otherwise of any one of its members, is or has been filled by appointment, said appointee may legally hold said office until the next annual school election following said appointment, but no longer, and at the annual election said vacancy shall be filled in the same way and manner as authorized by law for the annual election of school trustees. [S. L. 1886, ch. 93, § 6.]

Vacancy in board, how filled.

SEC. 3944. When a vacancy occurs in any school board by the resignation, death or otherwise of any of its members, three months or more before the following annual school election, said vacancy cannot be filled by appointment, but a special election must be called in the way provided by law for the purpose of filling such vacancy; but if such vacancy occurs less than three months before the next annual school election, such vacancy shall be filled by appointment by the board. [S. L. 1886, ch. 93, § 7. C. L. 1876, ch. 103, § 32.]

Bond of district treasurer.

SEC. 3945. The district treasurer shall give bonds to the district in such penalty and with such sureties as the board of the county commissioners shall direct and approve, conditioned for the faithful application of all money which may come into his hands by virtue of his office; *Provided*, Said bonds shall not exceed one and one-quarter times the amount of all the school moneys handled by said treasurer in any one year. Said penalty may be increased from time to time as the interests of the district may require. The said bond, after being approved by the board of county commissioners, shall be filed with the county treasurer, and it is hereby made unlawful for the county treasurer to pay over any sums of money out of the school fund to any district treasurer until such bond shall have been approved and filed as herein provided, and in case of a breach in the conditions of said bond, suit shall be brought thereon by the board of the county commissioners of the county in which the district is situated for the benefit of said district. [S. L. 1884, ch. 81, § 1.]

Establishment of high schools.

SEC. 3946. The county superintendent and district board of directors, may determine whether a school of a higher grade shall be established in the district, the number of teachers to be employed, and the course of instruction to be pursued therein, until the meeting of the teachers' institute, provided for by law, at which time the institute shall determine the studies to be pursued in all schools of like grade in the territory; and the superintendent of public instruction shall have the same power to carry into effect the determination of the institute, as is provided in other cases; and the board may erect, for the purpose, one or more permanent school houses, and shall cause such classification of the pupils as they may deem necessary; but in selecting the site for such school house, or school houses, the permanent interest and future welfare of the people of the entire district shall be consulted. [C. L. 1876, ch. 103, § 33.]

Separate school for colored children.

SEC. 3947. Where there are fifteen or more colored children within any school district, the board of directors thereof, with the approval of county superintendent of schools, may provide a separate school for the instruction of such colored children. [C. L. 1876, ch. 103, § 34.]

Employment and payment of teachers.

SEC. 3948. The district board shall employ all teachers necessary for the schools of the district, and pay them by draft on the treasurer. [C. L. 1876, ch. 103, § 35.]

School age—Compulsory education.

SEC. 3949. The district schools established under the provisions of this title shall, at all times be equally free and accessible to all children resident therein, over six and under the age of twenty-one years, subject to such regulations as the district board in each district may prescribe. And it shall be duty of all parents and guardians or others persons having the control of children between the ages above mentioned, to send such children to some school, at least three months in each and every year, except in case of invalids, and others to whom the school room would be injurious. In such cases, the district board shall, upon receipt of a physician's certificate, excuse such children; and the district board may, in its discretion, excuse children from attendance when a compliance with this title would work great hardship. In all such cases the clerk of the board shall state the reason for excuse, and the name of the child or person excused, and the length of time for which excused, at large in the minutes of the proceedings of the board; *Provided*, That in all cases the applicant may appeal from the decision of the board to the county superintendent, whose decision shall be final. [C. L. 1876, ch. 103, § 36.]

Liability of parents and guardians—Authority of police officers.

Sec. 3950. Any parent or guardian, or other person, having children in their charge between the ages of seven and sixteen years, who shall neglect or refuse to comply with the provisions of this chapter, shall, on conviction, be punished by a fine not exceeding twenty-five dollars, for each and every offense, and it shall be the duty of all sheriffs, constables or police officers, at all times, whenever it comes to their knowledge that any child is living idly and loitering about the streets or thoroughfares and spending its time in an idle and dissolute manner, to notify some member of the school board of the district in which such child is living, whose duty it shall be to immediately make all the proper inquiries to ascertain the reasons for the non-attendance of said child in some school of the county in which such child may be found by said board; if any such child or ward is wilfully violating the conditions of this law, it shall become the duty of the county superintendent of schools, on written notice from the board, to make a complaint before some justice of the peace against the parent or guardian of said child or ward, or to make complaint against such child or ward, as provided in cases of vagrancy, under the laws of this territory. [C. L. 1876, ch. 103, § 37. S. L. 1877, pp. 116 and 117, § 1.]

CHAPTER 4.

DISTRICT OFFICERS AND THEIR DUTIES.

SECTION.

3951. Director to preside at meetings and countersign orders.
3952. How drafts and orders drawn.
3953. By whom district to appear in actions.
3954. Duties of clerk.
3955. Clerk shall keep accounts.
3956. Notice of district meetings.
3957. Annual report of clerk to county superintendent.
3958. Failure to make report—Penalty.
3959. Duties of treasurer—Publication of report.
3960. Teachers' fund.
3961. School house fund.
3962 Treasurer to receive district money.
3963. Treasurer to render statement on request.

Director to preside at meetings and countersign orders.

Sec. 3951. The director, when present, shall preside at all meetings of the board of the district, and countersign all orders on the treasury for the payment of money. [C. L. 1876, ch. 103, § 38.]

How drafts and orders drawn.

Sec. 3952. All drafts and orders drawn on the district treasurer, as required in the foregoing section, shall specify the fund on which they are drawn, and the use for which the money is designed; and shall be signed by the district clerk. [C. L. 1876, ch. 103, § 39.]

By whom district to appear in actions.

Sec. 3953. The director shall appear in behalf of his district, in all suits brought by or against the same; but when he is individually a party, this duty shall be performed by the clerk. [C. L. 1876, ch. 103, § 40.]

Duties of clerk.

Sec. 3954. The clerk shall record all the proceedings of the board, and of the district meetings, in separate books to be kept for that purpose; he shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him by other school officers, pertaining to the business of the district; and shall sign all drafts, warrants and orders drawn by him. [C. L. 1876, ch. 103, § 41.]

Clerks shall keep accounts.

SEC. 3955. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the district board, to be audited and paid as herein provided, out of the school fund. [C. L. 1876, ch. 103, § 42.]

Notice of district meetings.

SEC. 3956. He shall give ten days previous notice of all regular and special meeting of the district, herein authorized, by posting up a written notice in three different places therein; and shall furnish a copy of the same to the teachers of each schools in the district, to be read once in the presence of the pupils thereof. [C. L. 1876, ch. 103, § 43.]

For requisites of notice of special district meeting, see § 3942.

Annual report of clerk to county superintendent.

SEC. 3957. The district clerk shall, on the first Monday of September in each year, submit a report to the county superintendent, for the year past, then ending:

First—Of the number of schools taught in such district, the number of days each scholar attended the same, and the aggregate number of days of attendance of said school respectively, as certified by the teachers of the several schools of such district;

Second—The number of schools, and the branches taught in each;

Third—The number of pupils in each school, and of each sex;

Fourth—The number of teachers employed in each school, and the average compensation of each per month;

Fifth—The number of days the school has been taught, and by whom;

Sixth—The average cost of tuition for a pupil, per month, in each school;

Seventh—Books used in each school;

Eighth—The number of volumes in the library of each school;

Ninth—The aggregate amount paid teachers during the year, the source from which the same was received, and the amount of the teachers' fund in the hands of the treasurer;

Tenth—The number of district school houses, and the cost of each;

Eleventh—The amount raised in the district by tax, for the erection of school houses, and for other purposes authorized in this title, and such other formation as he may deem useful. [C. L. 1876, ch. 103, § 44.]

Failure to make report—Penalty.

SEC. 3958. Should the clerk fail to file his reports, as above directed, he shall forfeit the sum of twenty-five dollars, and shall be liable to make good all loss resulting to the district from such failure, suit to be brought in both cases by the director, in the name of the district, on his official bond. [C. L. 1876, ch. 103, § 45.]

Duties of treasurer—Publication of report.

SEC. 3959. The treasurer shall have the custody of all moneys belonging to the district, and shall pay out the same upon the order of the clerk, countersigned by the director; and shall keep an account of the receipts and expenditures thereof, in a book provided for that purpose. He shall cause to be published in some newspaper of general circulation in the county wherein such school district is situate, on the first week of July in each year, a full and true report of the receipts and disbursements of said district for the year next preceding such report. [C. L. 1876, ch. 103, § 46. S. L. 1884, ch. 81, § 2.]

Teachers' fund.

SEC. 3960. The moneys for the payment of teachers shall be called the "teachers' fund" and the treasurer shall keep distinct and separate accounts with them; and no warrant for money shall be paid by the treasurer which does not specify the fund on which it is drawn, and the specific use to which it is to be applied. [C. L. 1876, ch. 103, § 47.]

School house fund.

Sec. 3961. The school house fund shall consist only of taxes collected in the district; and all other school moneys belonging to the district shall go to the teachers' fund, and shall be applied to no other use except to pay the wages of school teachers in the district. [C. L. 1876, ch. 103, § 48.]

Treasurer to receive district money.

Sec. 3962. The treasurer shall apply for, and receive all money apportioned to the district, by the county superintendent, when notified of said apportionment. [C. L. 1876, ch. 103, § 49.)

Treasurer to render statement on request.

Sec. 3963. He shall render a statement of the finances of the district, as shown by the records of his office, at any time when required by the district board. [C. L. 1876, ch. 103, § 50.]

CHAPTER 5.

SCHOOL TAX AND THE COLLECTION THEREOF.

SECTION.
3964. Tax levy for school purposes.
3965. Duties of clerk and assessor as to district taxes.
3966. Equalization of assessment and levy of taxes.

SECTION.
3967. Manner of collecting taxes.
3968. To whom school moneys paid.

Tax levy for school purposes.

Sec. 3964. The county commissioners shall, at the time of levying tax for county purposes, cause to be levied a tax for the support of schools within the county, as provided by law, which shall be collected by the county collector, at the same time, and in the same manner as territorial and county taxes are collected, with the exception that it shall be receivable in cash or warrants of the school. The county treasurer shall, at all times hold, subject to the draft of the proper officers, all moneys belonging to teachers or school house fund. [C. L. 1876, ch. 103, § 51.]

Duty of clerk and assessor as to district taxes.

Sec. 3965. Whenever a sum of money has been voted by a district, the clerk shall, under the supervision of the director, make out and certify, over his official signature, the amount of money voted in his district, and on or before the fourth Monday in May, in each year, cause the same to be filed in the office of the clerk of the board of county commissioners. The clerk shall also, at the same time, notify the county assessor, in writing, of the action of the district meeting. The county assessor shall, at the time of making the county assessment, also assess the property of each district from which he has received notification as aforesaid, and return to the county clerk, at the time of returning the county assessment roll, a separate roll of each district by him assessed, for which services he shall receive five dollars per day for the time actually employed in making such separate assessment roll, which sum shall be paid out of the treasury of each district so assessed. [C. L. 1876, ch. 103, § 52. S. L. 1877, p. 115, § 1. S. L. 1886, ch. 97, § 18.]

Equalization of assessment and levy of taxes.

Sec. 3966. The board of county commissioners of each county shall have the power and it is made their duty to equalize the assessment and valuation of the taxable property of all the several school districts in the county which is assessable by the county assessor, and shall also have power to add to such asseessment any taxable property in such school district not included in the assessments as returned by the assessor, and which it was his duty to assess in the same manner as is or hereafter may be provided by law for county and territorial purposes, and it shall be the duty of the board of county commissioners when making the annual levy for taxes, to levy upon the taxable property of each school district a tax sufficient to raise the amount of money voted in the district for the year, which levy shall also be made upon the assessed valuation of railroad and telegraph property in such school district as assessed by the territorial board of equalization. And the county clerk in making out the annual tax list shall carry out in a separate column the amount of the district school tax in the same manner as other taxes. [S. L. 1882, ch. 91, § 1.]

Manner of collecting taxes.

SEC. 3967. The taxes and assessments of all school districts for all purposes, except as otherwise specially provided by law, shall be collected like county taxes, and all delinquent taxes shall be returned by the collector in the same manner as other delinquent taxes are required by law to be returned. [C. L. 1876, ch. 103, § 54.]

To whom school moneys paid.

SEC. 3968. The amount of tax collected by the county collector shall be paid over to the county treasurer like other taxes, and shall be held by said county treasurer subject to the draft of the county superintendent, and shall be paid over accordingly; *Provided*, That the money collected on the district tax rolls shall be paid by the collector directly to the treasurer of the proper district, and take his receipt therefor. [C. L. 1876, ch. 103, § 55.]

CHAPTER 6.

MISCELLANEOUS PROVISIONS.

SECTION.
3969. Physiology and hygiene shall be taught.
3970. Failure to comply with last section—Penalty.
3971. No discrimination in pay because of sex of teacher.
3972. Examination in physiology, etc., required.
3973. Teacher to make report.
3974. Refusal to deliver records to successor—Penalty.
3975. Employment of counsel.

SECTION.
3976. Collection and disposition of fines, etc.
3977. Officer failing to pay over money—Penalty.
3978. Effect of change in county boundaries on school districts.
3979. District No. 2 in Carbon County abolished.
3980. District on Fort Steele military reservation prohibited.
3981. Territorial treasurer authorized to receive donations for schools.
3982. Liability of treasurer for school money.

Physiology and hygiene shall be taught.

SEC. 3969. Physiology and hygiene, which shall include in each division of the subject special reference to the effects of alcohol and narcotics upon the human system, shall be included in the branches taught in the common schools of the territory, and shall be introduced and taught, either orally or by text book, in all departments of the public schools above the second primary grade, and in all educational institutions supported wholly or in part by the territory. [S. L. 1886, ch. 35, § 1.]

Failure to comply with last section—Penalty.

SEC. 3970. It shall be the duty of the several county and city superintendents of schools in the territory, and of the secretary of the board of directors of all other educational institutions receiving aid from the territory, to report to the territorial superintendent of public instruction any failure or neglect on the part of the board of trustees of any school district, or the board of directors of any educational institution receiving aid from the territory, to make proper provision for the teaching of the branches mentioned in the last preceding section in any or all of the schools or other educational institutions under their charge, or over which they have jurisdiction, and such failure on the part of the above mentioned officers, so reported and satisfactorily proved, shall be deemed sufficient cause for withholding the warrant for the district appropriation of school money to which such school district or educational institution would otherwise be entitled. [S. L. 1886, ch. 35, § 2.]

No discrimination in pay because of sex of teacher.

SEC. 3971. In the employment of teachers, no discrimination shall be made in the question of pay on account of sex, when the persons are equally qualified. [C. L. 1876, ch. 103, § 62.]

Examination in physiology, etc., required.

SEC. 3972. No certificate shall be granted hereafter to any person to teach in the schools of Wyoming, who shall not pass a satisfactory examination in physiology and hygiene, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system. [S. L. 1886, ch. 35, § 3.]

Teacher to make report.

SEC. 3973. It shall be the duty of the teacher of every district school, or graded school, to make out and file with the district clerk, at the expiration of each term of the school, a full report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the names of such scholars, the number of days each scholar attended the same, the aggregate number of days attendance of said schools, the text books used, the branches taught and the number of pupils engaged in the study of each of said branches. Any teacher who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school, at the discretion of the district board. [C. L. 1876, ch. 103, § 56.]

Refusal to deliver records to successor—Penalty.

SEC. 3974. Every school district clerk, or treasurer, who shall neglect or refuse to deliver to their successors in office, all records and books, belonging severally to their offices, shall be subject to a fine not exceeding five hundred dollars. [C. L. 1876, ch. 103, § 57.]

Employment of counsel.

SEC. 3975. In all cases where suits may be instituted, by, or against, any of the school officers contemplated or created by this title, to enforce any of the provisions herein contained, counsel may be employed, if necessary, by the officer instituting the suit, and the expense of the suit shall be borne by the district, county or territory in whose name, or against whom, the same may be instituted. [C. L. 1876, ch. 103, § 58.]

Collection and disposition of fines, etc.

SEC. 3976. All fines, penalties and forfeitures provided by this title may be recovered by action in the name of the people of the Territory of Wyoming for the use of the proper school district or county, and when they accrue, belong to the respective districts or counties in which the same may have accrued; and the treasurer for their districts, and the county commissioners of their counties are hereby authorized to receive and apply the proceeds of such forfeitures as the interest of the permanent fund is now, or may hereafter be, applied. [C. L. 1876, ch. 103, § 59.]

Officer failing to pay over money—Penalty.

SEC. 3977. Any officer or person collecting or receiving any fines, forfeitures or other moneys and refusing and failing pay over the same as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent. per month during the time of so withholding the same. [C. L. 1876, ch. 103, § 60.]

Effect of change in county boundaries on school districts.

SEC. 3978. If by any act of the territorial legislature changing the boundary line or lines of any county or counties, or forming new counties from counties already formed, any legally organized school district is or has been separated from the county to which it then belonged, and is or has been joined to another county, the members of the school board of such school district so separated from one county and joined to another county, shall hold their respective offices until the next annual school election following said change in county boundaries; and until such annual school election said school board may draw the public school funds for paying teachers, or other necessary legal school expenses from the school treasury of the county to which said school district formerly belonged, and in the same way and manner as said board would have drawn and expended said public moneys had no change in county boundaries been made. [S. L. 1886, ch. 93, § 5.]

District number two in Carbon County abolished.

SEC. 3979. School district number two, of Carbon County, consisting chiefly of the Fort Fred Steele military reservation is abolished. [S. L. 1882, ch. 93, § 1.]

District on Fort Steele military reservation prohibited.

SEC. 3980. It shall be unlawful for the superintendent of schools or the board of county commissioners of Carbon County or the territorial superintendent of public instruction to hereafter establish a school district which shall consist in whole or in part of said military reservation or to establish or maintain any school within the limits of said reservation which shall receive its support in whole or in part from the general school fund of Carbon County. [S. L. 1882, ch. 93, § 3.]

Territorial treasurer authorized to receive donations for schools.

SEC. 3981. Whenever the Territory of Wyoming shall be entitled to receive any moneys or funds from the United States of America, or from any other source or authority, to be expended for the benefit of the public schools of the territory, or held or in any manner applied for their benefit, the territorial treasurer is hereby authorized to receive and receipt for such moneys or funds, and to make such application and use of the same as may be required by law. Should such moneys or funds be donated to the territory, and should the act of donation require such moneys or funds to be applied or held, or used in a particular manner, they shall be so applied. [S. L. 1886, ch. 101, § 1.]

Liability of treasurer for school money.

SEC. 3982. The territorial treasurer shall faithfully account for all moneys or funds received pursuant to the foregoing section, and he and his sureties upon his official bond shall be liable for any failure to so account for such moneys or funds. [S. L. 1886, ch. 101, § 2.]

TITLE 46. SCHOOL DISTRICT BONDS.

Chapter 1. Albany county, district no. 1. (bonds of 1882.)
Chapter 2. Albany county, district no. 1. (bonds of 1886.)
Chapter 3. Carbon county, district no. 3. (bonds of 1886.)
Chapter 4. Johnson county, district no. 1. (bonds of 1886.)
Chapter 5. Uinta county, district no. 1. (bonds of 1884.)
Chapter 6. Uinta county, district no. 1. (bonds of 1886.)
Chapter 7. Uinta county, district no. 6. (bonds of 1884.)

CHAPTER 1.

ALBANY COUNTY, DISTRICT NO. 1. (BONDS OF 1882.)

SECTION.
3983. Authority to issue bonds.
3984. Terms of bonds.
3985. Registration of bonds.
3986. Execution of bonds.
3987. Interest coupons.
3988. Annual bond tax.
3989. Redemption of bonds.
SECTION.
3990. Pledge of taxable property.
3991. Sale of bonds—Custody of funds—Separate bond of treasurer.
3992. Cancellation and burning of paid bonds.
3993. Redemption of old bonds.
3994. Treasurer's compensation.

Authority to issue bonds.

Sec. 3983. The board of directors of school district number one in the County of Albany are hereby authorized to issue the bonds of said school district for any sum not to exceed thirty thousand dollars, or so much thereof as may be necessary for the purpose of redeeming, retiring and cancelling the bonds issued by said board under and by virtue of the provisions of an act approved December fourth, eighteen hundred and seventy-seven. [S. L. 1882, ch. 8, § 1.]

Terms of bonds.

Sec. 3984. Said board of directors shall issue said bonds for the amount mentioned in the last preceding section, or so much thereof as shall be sufficient for the purpose contemplated by this chapter; said bonds shall be issued in sums of not less than fifty dollars, and shall be redeemed by said district within a period not exceeding thirty years and not less than one year from date of issue, and shall bear interest not to exceed the rate of eight per centum per annum on each dollar of their face, the rate of interest to be determined by said board of directors; said bonds shall be numbered from one upwards, and before being issued shall be registered by the county treasurer of said Albany County. [S. L. 1882, ch. 8, § 2.]

Registration of bonds.

Sec. 3985. The county treasurer of said Albany County shall keep a book in which shall be registered all of said bonds, showing the number of the bond, the date of issue, to whom issued, amount, number of coupons, date of redemption, date of registry and payment of interest, which books shall, during business hours, be open to inspection. [S. L. 1882, ch. 8, § 3.]

Execution of bonds.

Sec. 3986. All bonds issued by virtue of this chapter shall be signed by the director of the board of said district, countersigned by the county treasurer of said Albany County, and attested by the clerk of said district, with the seal of said district attached, which seal shall be provided for such purpose and other purposes provided by law, and no bonds shall be sold for less than one hundred cents on the dollar. [S. L. 1882, ch. 8, § 4.]

Interest coupons.

SEC. 3987. Said bonds shall have coupons attached representing the interest to be paid each year, and the coupons representing the interest shall be detached from the bond before presentation for payment of the interest for the year corresponding, and shall be forthwith cancelled by the county treasurer by writing the word "cancelled" across the face thereof, and the interest on all bonds shall be payable at the county treasury of Albany County, and may be payable annually or semi-annually as the said board of directors may deem advisable. [S. L. 1882, ch. 8, § 5.]

Annual bond tax.

SEC. 3988. There shall annually be levied by the board of county commissioners of said Albany county, on all taxable property within the limits of said school district, a tax not to exceed six mills on the dollar of valuation, which tax shall be known as the school house bond fund of school district number one, and said tax shall be payable in gold or silver coin or in United States treasury notes or national bank notes, and shall be used to pay interest or principal of said bonds, and for no other purpose, and said tax shall be collected in the same manner as county taxes and paid into the county treasury by the collector of taxes. [S. L. 1882, ch. 8, § 6.]

Redemption of bonds.

SEC. 3989. The said board of directors shall each year after the first retire as many of said bonds as can be redeemed with the amount of said school house bond fund at the time in the hands of the county treasurer. In all cases said bonds shall be redeemed by the payment of number one first, and proceeding consecutively upwards with those outstanding. All bonds when redeemed shall immediately be cancelled by the county treasurer, in such manner as the board of directors may direct. [S. L. 1882, ch., 8, § 7.]

Pledge of taxable property.

SEC. 3990. All taxable property of said district, as it now stands, is hereby pledged to the payment of the principal and interest of said bonds in the manner herein provided, and it shall not be lawful to use or divert any portion of said school house bond fund for any purpose whatever, except the payment of said principal and interest. [S. L. 1882, ch. 8, § 8.]

Sale of bonds—Custody of funds—Separate bond of treasurer.

SEC. 3991. The said board of directors shall negotiate the sale of said bonds, or may issue said bonds in exchange for any of the bonds issued under and by virtue of the act approved December fourth, eighteen hundred and seventy-seven, but the county treasurer of said Albany County shall have the custody of all funds realized from such sale, and shall pay the same out on the written order of said board of directors, or a majority thereof, taking the receipt in every case of the person ~~in~~ whose favor said order is drawn, which order and receipt shall be his voucher for money so paid out; and it shall be duty of said board of directors of said school district to exact of said county treasurer a separate bond, to be made to school district number one in Albany County in Wyoming Territory in such sum as they may deem proper, with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him by this chapter, and the faithful accounting for the moneys deposited with him and realized from the sale of bonds, as herein provided for, and such treasurer's bond shall be and remain in the custody of said board of directors. [S. L. 1882, ch. 8, § 9.]

Cancellation and burning of paid bonds.

SEC. 3992. From time to time and as the bonds issued under and by virtue of the act of December fourth, eighteen hundred and seventy-seven, shall be redeemed or exchanged for under and by virtue of the provisions of this chapter, they shall be first marked on the face thereof with the word "cancelled" and whenever there shall be as many as ten of said bonds in hand, they shall be burned by the treasurer of Albany County in the presence of at least two of the directors of said school district number one, and the county clerk, a list of the number and amounts of said cancelled and burnt bonds being made and verified by the county treasurer and sheriff and filed in the county clerk's office, for preservation as a record of the numbers and amounts of the bonds so cancelled and burned, and the persons present and assisting at the destruction and burning of the bonds, shall certify at the bottom of said list that the bonds by their dates, numbers and amounts were those which were destroyed in pursuance of this chapter. [S. L. 1882, ch. 8, § 10.]

Redemption of old bonds.

SEC. 3993. Said board of directors for the purpose of effectually carrying out this chapter are authorized and empowered to call in the bonds issued under and by virtue of the act of December fourth, eighteen hundred and seventy-seven, an act authorizing the building of a school house in the school district number one, in the County of Albany in the Territory of Wyoming, and to give notice to that effect for thirty days in some daily paper published at Laramie City, which notice may prescribe that in case any party or parties holding said bonds so issued under and by virtue of the act approved December fourth, eighteen hundred and seventy-seven, shall fail to present them for payment at the time in said notice mentioned, that thereafter said bonds shall cease to draw interest. [S. L. 1882, ch. 8, § 11.]

Treasurer's compensation.

SEC. 3994. The county treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of bonds as may be allowed him by such board of directors, not to exceed one per centum on each dollar actually received and disbursed under the order or orders of such board of directors, but he shall receive no commission on any sum or sums turned over by him to his successor in office. [S. L. 1882, ch. 8, § 12.]

CHAPTER 2.

ALBANY COUNTY, DISTRICT NO. 1. (BONDS OF 1886.)

SECTION.
3995. Authority to issue bonds.
3996. Terms of bonds.
3997. Registration of bonds.
3998. Execution of bonds.
3999. Interest coupons.
4000. Annual tax levy.
4001. Redemption of bonds.
SECTION.
4002. Pledge of taxable property.
4003. Sale of bonds—Custody of funds—Separate bond of treasurer.
4004. Cancellation and burning of paid bonds.
4005. Redemption of old bonds.
4006. Treasurer's compensation.

Authority to issue bonds.

SEC. 3995. The board of directors of school district number one in the County of Albany, Territory of Wyoming, are hereby authorized to issue the bonds of said school district for any sum not exceeding thirty thousand dollars, or so much thereof as may be necessary for the purpose of redeeming, retiring and cancelling the bonds issued by said board under and by virtue of the provisions of an act approved February twenty-eighth, eighteen hundred and eighty two. [S. L. 1886, ch. 86, § 1.]

Terms of bonds.

SEC. 3996. Said board of directors shall issue said bonds for the amount mentioned in the last preceding section, or so much thereof as shall be sufficient for the purpose contemplated by this chapter; said bonds shall be issued in sums of not less than fifty dollars, and shall be redeemed by said district within a period not exceeding thirty years and not less than one year from date of issue, and shall bear interest not to exceed the rate of six per centum per annum on each dollar of their face, the rate of interest to be determined by said board of directors; said bonds shall be numbered from one upwards, and before being issued shall be registered by the county treasurer of said Albany County. [S. L. 1886, ch. 86, § 2.]

Registration of bonds.

SEC. 3997. The county treasurer of said Albany County shall keep a book, in which shall be registered all of said bonds, showing the number of the bond, the date of issue, to whom issued, amount, number of coupons, date of redemption, date of registry, and payment of interest, which books shall, during business hours, be open to inspection. [S. L. 1886, ch. 86, § 3.]

Execution of bonds.

SEC. 3998. All bonds issued by virtue of this chapter shall be signed by the director of the board of said district, countersigned by the county treasurer of said Albany County and attested by the clerk of said district, with the seal of said district attached; and no bonds shall be sold for less than one hundred cents on the dollar. [S. L. 1886, ch. 86, § 4.]

Interest coupons.

SEC. 3999. Said bonds shall have coupons attached representing the interest to be paid each year, and the coupons representing the interest shall be detached from the bond before presentation for payment of the interest for the year corresponding, and shall be forthwith cancelled by the county treasurer by writing the word cancelled across the face thereof, and the interest on all bonds shall be payable at the county treasury of Albany County, and may be payable annually or semi-annually as the said board of directors may deem advisable. [S. L. 1886, ch. 86, § 5.]

Annual tax levy.

SEC. 4000. There shall annually be levied by the board of county commissioners of said Albany County on all taxable property within the limits of said school district a tax not to exceed six mills on the dollar of valuation, which tax shall be known as the school house bond fund of school district number one, and said tax shall be payable in cash and shall be used to pay interest or principal of said bonds, or both, and for no other purpose; and said tax shall be collected in the same manner as county taxes and paid into the county treasury by the collector of taxes. [S. L. 1886, ch. 86, § 6.]

Redemption of bonds.

SEC. 4001. The said board of directors shall each year after the first redeem as many of said bonds as can be redeemed with the amount of said school house bond fund at the time in the hands of the county treasurer. In all cases said bonds shall be redeemed by the payment of number one first, and proceeding consecutively upwards with those outstanding. All bonds redeemed shall immediately be cancelled by the county treasurer in such manner as the board of directors may direct. [S. L. 1886, ch. 86, § 7.]

Pledge of taxable property.

SEC. 4002. All taxable property of said district as it now stands is hereby pledged to the payment of the principal and interest of said bonds in the manner herein provided, and it shall not be lawful to use or divert any portion or said school house bond fund for any purpose whatever, except the payment of said principal and interest. [S. L. 1886, ch. 86, § 8.]

Sale of bonds—Custody of funds—Separate bond of treasurer.

SEC. 4003. The said board of directors shall negotiate the sale of said bonds, or may issue said bonds in exchange for any or all of the bonds issued under and by virtue of the aforesaid act, approved February twenty-eighth, A. D. eighteen hundred and eighty-two; but the county treasurer of said Albany County shall have the custody of all funds realized from such sale, and shall pay the same out on the written order of said board of directors, or a majority of them, taking the receipt in every case of the person in whose favor said order is drawn, which order and receipt shall be his voucher for moneys so paid out; and it shall be the duty of said board of directors of said school district to exact of said county treasurer a separate bond, to be made to said school district number one, in Albany County, in Wyoming Territory, in such sum as they may deem proper, with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him by this chapter, and the faithful accounting for the money deposited with him and realized from the sale of bonds as herein provided for, and such treasurer's bond shall be and remain in the custody of the said board of directors. [S. L. 1886, ch. 86, § 9.]

Cancellation and burning of paid bonds.

SEC. 4004. From time to time, and as the bonds issued under and by virtue of the act of February twenty-eighth, A. D. eighteen hundred and eighty-two, shall be redeemed or exchanged for under and by virtue of the provisions of this chapter, they shall be first marked on the face thereof with the word "cancelled," and whenever there shall be as many as ten of said bonds in hand, they shall be burned by the treasurer of Albany County in the presence of at least two of the directors of said school district number one and the county clerk, a list of the numbers and the amounts of said cancelled and burnt bonds being made and verified by the county treasurer and sheriff of said Albany County, and filed in the office of the county clerk of said county, for preservation as a record of the numbers and amounts of the bonds so cancelled and burned, and the persons present and assisting at the destruction and burning of the bonds shall certify at the bottom of said list that the bonds by their dates, numbers and amounts were those which they destroyed in pursuance of this chapter. [S. L. 1886, ch. 86, § 10.]

Redemption of old bonds.

SEC. 4005. The said board of directors, for the purpose of effectually carrying out this chapter, are authorized and empowered to call in the bonds issued under and by virtue of the act of February twenty-eighth, A. D. eighteen hundred and eighty-two, an act authorizing the refunding of bonds issued by school district number one, in the County of Albany, in the Territory of Wyoming, and to give notice to that effect for thirty days in some daily paper published at Laramie City, which notice may prescribe that in case any party or parties holding said bonds so issued under and by virtue of the act approved February twenty-eighth, A. D. eighteen hundred and eighty-two, shall fail to present them for payment at the time in said notice mentioned, that thereafter said bonds shall cease to draw interest. [S. L. 1886, ch. 86, § 11.]

Treasurer's compensation.

SEC. 4006. The county treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of bonds, as may be allowed him by such board of directors, not to exceed one per centum on each dollar actually received and disbursed under the order or orders of such board of directors, but he shall receive no commission on any sum or sums turned over by him to his successor in office. [S. L. 1886, ch. 86, § 12.]

CHAPTER 3.

CARBON COUNTY DISTRICT NO. 3. (BONDS OF 1886.)

SECTION.
4007. Authority to issue bonds and erect building.
4008. Committee to superintend construction.
4009. Letting contract for construction.
4010. Terms of bond.
4011. Registration of bonds.
4012. Execution and sale of bonds.
4013. Interest coupons.

SECTION.
4014. Annual bond tax.
4015. Redemption of bonds.
4016. Pledge of taxable property.
4017. Custody of funds—Separate bond of treasurer.
4018. Treasurer's compensation.
4019. Construction committee to give bonds.

Authority to issue bonds and erect building.

SEC. 4007. The board of directors of school district number three, in the County of Carbon, are hereby authorized to build or cause to be built, a school house in the Town of Rawlins, in said school district number three, in said county, and for that purpose are hereby authorized to issue the bonds of said school district for any sum not exceeding twenty-five thousand dollars, which said school house shall be built and said bonds issued only under and by the provisions of this chapter; *Provided*, That the qualified electors of said school district shall so elect and determine at any regular meeting or at any special meeting held for such purpose. [S. L. 1886, ch. 16, § 1.]

Committee to superintend construction.

SEC. 4008. James France, John C. Davis, William Jungquist, Isaac C. Miller and John C. Friend are hereby constituted and appointed a committee to superintend the construction of said school house to be built on block thirty, in the Town of Rawlins, County of Carbon and Territory of Wyoming; and they, or a majority of them, shall have power to receive or reject bids and make contracts for the building of same, to have prepared said bonds, to receive and sell such bonds as may hereafter be issued by virtue of this chapter, and to carry out such plans and instructions as may especially come within the authority of the board of directors of said district, and any vacancy occurring in said committee by reason of the refusal or failure to act, resignation or inability to serve of any member of such committee, shall be filled by the remaining members thereof, and the person or persons so selected to fill such vacancy shall be deemed and considered a member of such committee, the same as if he had been constituted and appointed thereto under the provisions of this section. [S. L. 1886, ch. 16, § 2.]

Letting contract for construction.

SEC. 4009. If by a vote of a majority of such electors at such annual or special election a school house is ordered to be built, it shall be the duty of said committee to make all necessary arrangements and contracts for the building of said school house in such manner as said committee may deem best for the interests of said school district; and it shall be the duty of said committee to proceed at once, after the result of the vote is officially declared, to select the site for said school building on said block above described, title to which shall be in the name of said school district, and to settle upon plans and specifications for the erection of said school house, and to let the contract or contracts therefor to the lowest responsible bidder; and they may require a bond from any contractor in any amount not less than double the amount of the contract, with good and sufficient security for the faithful fulfillment of such contract as may be awarded to him. [S. L. 1886, ch. 16, § 3.]

Terms of bonds.

SEC. 4010. Said board of directors shall issue school house bonds for such an amount, not exceeding the amount mentioned in section four thousand and seven, as shall be found sufficient for the purpose contemplated in this chapter. Such bonds shall be issued in sums not less than fifty dollars, and shall be redeemed by said district within a period not exceeding thirty years, and not less than five years, from the date of issue, and shall bear interest at a rate not exceeding eight per centum per annum on each dollar of their face, which interest shall be payable annually, the rate of interest to be determined by the board of school directors. Such bonds shall be numbered from one upwards, and before being issued shall be registered by the treasurer of said Carbon County. [S. L. 1886, ch. 16, § 4.]

Registration of bonds.

SEC. 4011. The county treasurer of Carbon County shall keep a book in which shall be registered all such bonds, showing the number of the bond, the date of issue, amount, number of coupons, date of redemption, date of registry and payment of interest, which book shall, during business hours, be open for inspection. [S. L. 1886, ch. 16, § 5.]

Execution and sale of bonds.

SEC. 4012. All bonds issued by virtue of this chapter shall be signed by the director of the board of directors of said school district, countersigned by the county treasurer of said county, and attested by the clerk of said school district, with the seal of said district attached, which said seal shall be provided for such purpose and other district purposes provided by law, and none of said bonds shall be sold for less than their face value, and shall not be sold until thirty days notice shall have been given in some newspaper of general circulation in the territory of Wyoming. [S. L. 1886, ch. 16, § 6.]

Interest coupons.

SEC. 4013. Said bonds shall have coupons attached, representing the interest to be paid each year, and the coupons representing said interest shall be detached from the bonds before presentation for payment of the interest for the year corresponding, and upon payment shall be forthwith cancelled by the county treasurer, by writing the word "cancelled" across the face thereof. The interest on all bonds shall be payable at the county treasury of said Carbon County. [S. L. 1886, ch. 16, § 7.]

Annual bond tax.

SEC. 4014. There shall be annually levied by the board of county commissioners of Carbon County on all taxable property within the limits of said school district, a tax not to exceed seven mills on the dollar of valuation, which shall be known as the "school house bond fund of school district number three." Said tax shall be payable in lawful money of the United States, and shall be used to pay interest and principal of said bonds, and for no other purpose; and said tax shall be collected in the same manner and at the same time as the county taxes, and paid into the county treasury by the collector of taxes; *Provided*, That said committee are empowered to use from the funds realized from the sale of said bonds a sufficient amount of money to prepare and print said bonds, and to defray any necessary expense to be incurred in disposing of same. [S. L. 1886, ch. 16, § 8.]

Redemption of bonds.

SEC. 4015. The said board of directors shall, each year after the fifth, retire as many of said bonds as can be redeemed with the amount of said school house bond fund at the time in the hands of the county treasurer, and in all cases such bonds shall be redeemed by the payment of number one first, and proceeding consecutively upwards with those outstanding. All cancelled bonds shall be turned over to the board of directors at such times as they may direct. [S. L. 1886, ch. 16, § 9.]

Pledge of taxable property.

SEC. 4016. That all taxable property of said school district, as it now stands, is hereby pledged to the payment of the principal and interest of said bonds in the manner herein provided, and it shall not be lawful to use or divert any portion of said school house fund for any purpose whatever, except the payment of said principal and interest, and as provided in section four thousand and fourteen. [S. L. 1886, ch. 16, § 10.]

Custody of funds—Separate bond of treasurer.

SEC. 4017. The county treasurer of Carbon County shall have the custody of all funds realized from the sale of such bonds, and shall pay the same out upon the written order of said committee appointed in section two of this act, signed by its chairman, attested by its clerk, taking the receipt in all cases of the person in whose favor said order is drawn, which order and receipt shall be his voucher for moneys so paid. It shall be the duty of the board of directors of said school district to exact of the county treasurer a separate bond, to be made to school district number three, of Carbon County, Territory of Wyoming, in such sums and with such sureties as they may deem proper and sufficient, conditioned for the faithful performance of the duties required of said treasurer by this chapter, and the faithful accounting for the moneys deposited with him and realized from the sale of bonds as herein provided for, and such treasurer's separate bond shall be and remain in the custody of said board of directors. [S. L. 1886, ch. 16, § 11.]

Treasurer's compensation.

SEC. 4018. The county treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of the bonds as may be allowed by the said board of directors, not to exceed two per centum on each dollar actually received and disbursed by him upon the order or orders of said committee. But he shall not receive any compensation on any sum or sums turned over by him to his successor in office. [S. L. 1886, ch. 16, § 12.]

Construction committee to give bonds.

SEC. 4019. Before entering upon their duties, each member of said committee shall enter into a bond of five thousand dollars, with two or more good and sufficient sureties, for the faithful performance of the duties required of him as such committee-man, which bond shall run to school district number three, of Carbon County, Wyoming Territory, and shall be approved by and filed with the board of directors of said district; and said committee shall report their doings in the premises to said board of directors at the regular meetings of said board, or at such special meetings as said board may appoint for that purpose. [S. L. 1886, ch. 16, § 13.]

CHAPTER 4.

JOHNSON COUNTY, DISTRICT NO. 1. (BONDS OF 1886.)

SECTION.
4020. Authority to issue bonds.
4021. Terms of bonds.
4022. Registry of bonds.
4023. Execution of bonds.
4024. Interest coupons.
4025. Annual bond tax.
4026. Redemption of bonds.
4027. Pledge of taxable property.

SECTION.
4028. Notice of redemption.
4029. When bonds fail to draw interest.
4030. Preparation and sale of bonds.
4031. Custody of funds—Treasurer's compensation.
4032. Separate bond of treasurer.
4033. Payment of preliminary expenses.

Authority to issue bonds.

SEC. 4020. For the purpose of funding the existing indebtedness of school district number two in the County of Johnson, and for the purposes hereinafter stated, the board of directors of said district are hereby authorized to issue the bonds of said district, in any amount not exceeding ten thousand dollars. [S. L. 1886, ch. 39, § 1.]

Terms of bonds.

SEC 4021. Said bonds shall be issued in sums of one hundred dollars each, and shall be made payable in ten years from date of issue, or sooner, as hereinafter provided, and shall bear interest at a rate not exceeding eight per cent. per annum, the rate of interest to be determined by said board of directors; said bonds shall be numbered from one upwards, and before being issued shall be registered by the treasurer of said County of Johnson, and they shall be issued by order of the board of directors of said district. [S. L. 1886, ch. 39, § 2.]

Registry of bonds.

SEC. 4022. The county treasurer of said Johnson County shall keep a book in which shall be registered all of said bonds, showing the number of the bond, the date of issue, to whom issued, amount, date of redemption, date of registry and payment of interest, which book shall be open for the inspection of any and all persons during business hours. [S. L. 1886, ch. 39, § 3.]

Execution of bonds.

SEC. 4023. All bonds issued by virtue of this chapter shall be signed by the director of the board of said district, and by the clerk of said district, and shall have the seal of said district attached, and shall be countersigned by the county treasurer of said Johnson County, and no bonds shall be sold for less than par. [S. L. 1886, ch. 39, § 4.]

Interest coupons.

SEC. 4024. Said bonds shall have coupons attached representing the interest to be paid each year, which coupons shall be signed by the director of the board of said district and the clerk of said district, and countersigned by the treasurer of said Johnson County, and the coupon representing the interest shall be detached from the bond before presentation for payment of the interest for the year corresponding, and upon being paid, the said coupons shall be cancelled by stamping and writing the word "cancelled" across the face of said coupon, and the interest on all of said bonds shall be payable at the county treasurer's office of said Johnson County, on the first and ten succeeding days of January in each year (Sundays excepted), and the interest shall be payable annually. [S. L. 1886, ch. 39, § 5.]

Annual bond tax.

SEC. 4025. There shall annually be levied by the board of county commissioners of said Johnson County, on all taxable property within the limits of said school district, a tax not to exceed five mills on the dollar of valuation, the the amount of such levy to be determined and requested by the board of directors of said district, which tax shall be known as the "District bond tax of school district number two." Said tax shall be collected in the same manner as county taxes, and paid into the county treasury by the collector of taxes, and the fund raised thereby shall only be used to pay the interest or principal of said bonds. [S. L. 1886, ch. 39, § 6.]

Redemption of bonds.

SEC. 4026. The said board of directors of said district shall each year retire as many of said bonds, not exceeding one-tenth of the total issue, as can be redeemed with the amount of said "district bond tax fund" at the time in the hands of the county treasurer, the first redemption or retirement to occur on or immediately after December thirty-first, eighteen hundred and eighty-six. In all cases said bonds shall be redeemed by the payment thereof, beginning with number one, and proceeding consecutively upwards with those outstanding, paying the interest and principal due and cancelling the same. [S. L. 1886, ch. 39, § 7.]

Pledge of taxable property.

SEC. 4027. All the taxable property of such district is hereby pledged to the payment of the principal and interest of said bonds in the manner herein provided, and it shall not be lawful to use or divert any portion of said bond fund for any purpose whatever, except the payment of said principal and interest. [S. L. 1886, ch. 39, § 8.]

Notice of redemption.

SEC. 4028. It shall be the duty of the county treasurer of said Johnson County, at the request and under the direction of the board of directors, of said school district, to notify the holders of the bonds to be redeemed, by advertisement in some newspaper published in said county, for four consecutive weeks, or by personal notice, that the bonds, stating the number and to whom issued, will be paid on presentation thereof to the county treasurer. [S. L. 1886, ch. 39, § 9.]

When bonds fail to draw interest.

SEC. 4029. If said bonds are not presented within twenty days after such personal notice, or the completion of the advertisement, they shall fail to draw interest thereafter, and the surplus funds may be used to retire other bonds than those advertised or noticed, and immediately in the order succeeding, and the bonds advertised or noticed for payment need not be paid until the next year. All bonds shall be payable at the said county treasurer's office. [S. L. 1886, ch. 39, § 10.]

Preparation and sale of bonds.

SEC. 4030. The bonds and coupons herein authorized, shall be prepared by and under the direction of the board of directors of said district, and the said board of directors shall have authority, and they are hereby authorized, to negotiate a sale of said bonds at par value, and the money received by the sale of said bonds shall be used in payment of the existing indebtedness of said district, and for the necessary furnishing of the school buildings of said district, and such other purposes as the said district or the board of directors may determine. [S. L. 1886, ch. 39, § 11.]

Custody of funds—Treasurer's Compensation.

SEC. 4031. The county treasurer of said Johnson County shall have the custody of all funds realized from the sale of said bonds, until the same is drawn out by the order of the board of directors of said district, and he shall be entitled to receive one per cent. commission for the safe keeping and accounting for the same; *Provided*, That said county treasurer shall not be entitled to any commission on any funds turned over to his successor in office. [S. L. 1886, ch. 39, § 12]

Separate bond of treasurer.

SEC. 4032. The board of directors of said district shall require the said county treasurer to give to said district a separate bond, in such sum as said board may deem proper, with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him by this chapter, and the faithful accounting for the moneys deposited with him and realized from the sale of said bonds, as herein provided for, and such bond shall be approved by said board, and shall be and remain in the custody of said board of directors. [S. L. 1886, ch. 39, § 13.]

Payment of preliminary expenses.

SEC. 4033. All the expenses of preparing and engraving said bonds and coupons, negotiating the sale thereof, and the payment of the county treasurer's commission, shall be payable out of the general fund of the district, upon the order of the board of directors. [S. L. 1886, ch. 39, § 14.]

CHAPTER 5.

UINTA COUNTY, DISTRICT NO. I. (BONDS OF 1884.)

SECTION.
4034. Authority to erect building and issue bonds.
4035. Committee to superintend construction.
4036. Letting contract for construction.
4037. Terms of bonds.
4038. Registry of bonds.
4039. Execution and sale of bonds.
4040. Interest coupons.

SECTION.
4041. Annual bond tax.
4042. Redemption of bonds.
4043. Pledge of taxable property.
4044. Custody of funds—Separate bond of treasurer.
4045. Treasurer's compensation.
4046. Construction committee to give bonds.

Authority to erect building and issue bonds.

SEC. 4034. The board of directors of school district number one, in the County of Uinta, and Territory of Wyoming, are hereby authorized to build or cause to be built a school house in or near the Town of Evanston, in said school district number one, in said county, and for that purpose they are hereby authorized to issue the bonds of said school district for any sum not exceeding twenty thousand dollars, which said school house shall be built and said bonds issued only under and by the provisions of this chapter; *Provided*, That the qualified electors of said school district shall so elect and determine at any regular annual meeting, or at any special meeting, held for such purpose. [S. L. 1884, ch. 97, § 1.]

Committee to superintend construction.

SEC. 4035. A. C. Beckwith, J. Van A. Carter, J. L. Atkinson, G. F. Chapman and Jesse Knight are hereby constituted and appointed a committee to select and purchase a site for said school house, to superintend the construction of said school house, and they, or a majority of them, shall have power to receive and reject bids and make contracts for the building of the same, to receive and sell such bonds as may hereafter be issued by virtue of this chapter, and to carry out such plans and instructions as may especially come within the authority of the board of directors of said district, and any vacancy occurring in said committee by reason of the refusal or failure to act, resignation or inability to serve of any member of such committee, shall be filled by the remaining members thereof, and the person or persons so selected to fill such vacancy shall be deemed and considered a member of such committee, the same as if he had been constituted and appointed thereto under the provisions of this section. [S. L. 1884, ch. 97, § 3.]

Letting contract for construction.

SEC. 4036. If by a vote of a majority of such electors at such annual or special election a school house is ordered to be built, it shall be the duty of said committee to make all necessary arrangements and contracts for the building of said school house in such manner as said committee may deem best for the interests of said school district, and it shall be the duty of said committee to proceed at once, after the result of the vote is officially declared, to select and purchase the site for said school building, title to which shall be taken in the name of said school district, and to settle upon plans and specifications for the erection of said school house, and to let the contract or contracts therefor to the lowest responsible bidder; and they may require a bond from any contractor in any amount not less than double the amount of the contract, with good and sufficient security, for the faithful fulfillment of such contract as may be awarded to him. [S. L. 1884, ch. 97, § 3.]

Terms of bonds.

SEC. 4037. Said board of directors shall issue school house bonds for such an amount, not exceeding the amount mentioned in section four thousand and thirty-four, as shall be found sufficient for the purpose contemplated in this chapter. Such bonds shall be issued in sums not less than fifty dollars, and shall be redeemed by said district within a period not exceeding thirty years and not less than five years from the date of issue, and shall bear interest at a rate not exceeding eight per cent. per annum on each dollar of their face, which interest shall be payable annually, at a rate of interest to be determined by the board of school directors. Such bonds shall be numbered from one upwards, and before being issued shall be registered by the treasurer of said Uinta County. [S. L. 1884, ch. 97, § 4.]

Registry of bonds.

SEC. 4038. The county treasurer of said Uinta County shall keep a book in which shall be registered all such bonds, showing the number of the the bond, the date of issue, amount, numbers of coupons, date of redemption, date of registry and payment of interest, which book shall, during business hours, be open to inspection. [S. L. 1884, ch. 97, § 5.]

Execution and sale of bonds.

SEC. 4039. All bonds issued by virtue of this chapter shall be signed by the director of the board of directors of said school district, countersigned by the county treasurer of said county and attested by the clerk of said school district, with the seal of said district attached, which said seal shall be provided for such purpose and other district purposes provided by law, and none of said bonds shall be sold for less than their face value, and shall not be sold until thirty days notice shall have been given in some newspaper of general circulation in the Territory of Wyoming. [S. L. 1884, ch. 97, § 6.]

Interest coupons.

SEC. 4040. Said bonds shall have coupons attached, representing the interest to be paid each year, and the coupons representing said interest shall be detached from the bonds before presentation for payment of the interest for the year corresponding, and upon payment shall be forthwith cancelled by the county treasurer by writing the word "cancelled" across the face thereof. The interest on all bonds shall be payable at the county treasury of said Uinta County. [S. L. 1884, ch. 97, § 7.]

Annual bond tax.

SEC. 4041. There shall be annually levied by the board of county commissioners of Uinta County on all taxable property within the limits of said school district, a tax not to exceed seven mills on the dollar of valuation, which shall be known as the "school house bond fund of school district number one." Said tax shall be payable in lawful money of the United States, and shall be used to pay interest and principal of said bonds, and for no other purpose; and said tax shall be collected in the same manner and at the same time as the county taxes, and paid into the county treasury by the collector of taxes. [S. L. 1884, ch. 97, § 8.]

Redemption of bonds.

SEC. 4042. The said board of directors shall, each year after the fifth, retire as many of said bonds as can be redeemed with the amount of said school house bond fund at the time in the hands of the county treasurer, and in all cases such bonds shall be redeemed by the payment of number one first, and proceeding consecutively upwards with those outstanding. All cancelled bonds shall be turned over to the board of directors at such times as they may direct. [S. L. 1884, ch. 97, § 9.]

Pledge of taxable property.

SEC. 4043. All taxable property of said school district, as it now stands, is hereby pledged to the payment of the principal and interest of said bonds in the manner herein provided, and it shall not be lawful to use or divert any portion of said school house bond fund for any purpose whatever, except the payment of said principal and interest. [S. L. 1884, ch. 97, § 10.]

Custody of funds—Separate bond of treasurer.

SEC. 4044. The county treasurer of Uinta County shall have the custody of all funds realized from the sale of such bonds, and shall pay the same out upon the written order of said committee appointed in section four thousand and thirty-five, signed by its chairman, attested by its clerk, taking the receipt in all cases of the person in whose favor said order is drawn, which order and receipt shall be his voucher for moneys so paid. It shall be the duty of the board of directors of said school district to exact of the county treasurer a separate bond to be made to school district number one, of Uinta County, Territory of Wyoming, in such sums and with such sureties as they may deem proper and sufficient, conditioned for the faithful performance of the duties required of said treasurer by this chapter, and the faithful accounting for the moneys deposited with him and realized from the sale of bonds as herein provided for, and such treasurer's separate bond shall be and remain in the custody of said board of directors. [S. L. 1884, ch. 97, § 11.]

Treasurer's compensation.

SEC. 4045. The county treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of the bonds as may be allowed by the said board of directors, not to exceed two per centum on each dollar actually received and disbursed by him upon the order or orders of said committee. But he shall not receive any compensation on any sum or sums turned over by him to his successor in office. [S. L. 1884, ch. 97, § 12.]

Construction committee to give bonds.

SEC. 4046. Before entering on their duties, each member of said committee shall enter into a bond of five thousand dollars, with two or more good and sufficient sureties, for the faithful performance of the duties required of him as such committeeman, which bond shall run to school district number one, of Uinta County, Wyoming Territory, and shall be approved by and filed with the board of directors of said district, and said committee shall report their doings in the premises to said board of directors at the regular meetings of said board, or at such special meetings as said board may appoint for that purpose. [S. L. 1884, ch. 97, § 13.]

CHAPTER 6.

UINTA COUNTY DISTRICT, NO. I. (BONDS OF 1886.)

SECTION.
4047. Authority to issue bonds.
4048. Committee to purchase furniture and negotiate bonds.
4049. Registration of bonds.
4050. Interest coupons—Execution of bonds.

SECTION.
4051. Annual bond tax.
4052. Redemption of bonds.
4053. Pledge of taxable property.
4054. Custody of funds.
4055. Treasurer's compensation.

Authority to issue bonds.

SEC. 4047. The board of directors of school district number one, in the County of Uinta, are hereby authorized, for the purpose of providing the heating apparatus and furniture necessary for the school building heretofore erected in said district under the provisions of an act of the eighth legislative assembly of Wyoming Territory, entitled "an act to authorize the building of a school house in school district number one, in the County of Uinta, Territory of Wyoming," to issue the bonds of said school district for any sum not exceeding five thousand dollars, which said bonds shall be numbered from one upward, and said bonds shall be of the denomination of one hundred dollars each, payable in fifteen years from the date of issue, redeemable at the pleasure of said district after five years. Said bonds shall bear interest at a rate not exceeding eight per cent. per annum on each dollar of their face, which interest shall be payable annually, the rate of interest to be determined by the board of school directors of said district, and before being issued said bonds shall be registered by the treasurer of said Uinta County. [S. L. 1886, ch. 6, § 1.]

Committee to purchase furniture and negotiate bonds.

SEC. 4048. A. V. Quinn, N. Beeman and Thomas Blyth are hereby constituted a committee to purchase the necessary heating apparatus and furniture for said school house, and they or a majority of them shall have the power to receive and reject bids and make contracts in relation thereto and to receive and sell such bonds as may hereafter be issued by virtue of this chapter, and any vacancy occurring in said committee by reason of the failure or refusal to act, resignation or inability to serve of any member of the committee, shall be filled by the remaining members thereof, and the person or persons so selected to fill such vacancy shall be deemed and considered a member of such committee the same as if he had been constituted and appointed thereto in special terms by the provisions of this chapter. Before entering upon their duties each member of said committee shall enter into a bond of one thousand dollars, with two or more good and sufficient sureties for the faithful performance of his duties as committee-man, which bond shall run to school district number one of Uinta County, Wyoming Territory, and shall be approved and filed with the board of directors of said district. [S. L. 1886, ch. 6, § 2.]

Registration of bonds.

SEC. 4049. The county treasurer of Uinta County shall keep a book in which shall be registered all such bonds, showing the number of the bond, date of issue, amount, number of coupons, date of redemption, date of registry and payment of interest, which book shall during business hours be open to inspection. [S. L. 1886, ch. 6, § 3.]

Interest coupons—Execution of bonds.

SEC. 4050. Said bonds shall have coupons attached representing the interest to be paid each year, and the coupons representing such interest shall be detached from the bonds before presentation for payment of the interest for the year corresponding, and upon payment shall be forthwith cancelled by the county treasurer by writing the word "cancelled" across the face thereof. The interest on all bonds shall be payable at the county treasury of said Uinta County, and all bonds issued by virtue of this chapter shall be signed by the director of the board of directors of said school district, countersigned by the county treasurer of said county and attested by the clerk of said district, with the seal of said district attached, and none of said bonds shall be sold for less than their face value. [S. L. 1886, ch 6, § 4.]

Annual bond tax.

SEC. 4051. There shall be annually levied by the board of county commissioners of Uinta County on all taxable property within the limits of said school district a tax not to exceed three mills on the dollar of valuation, which shall be known as the "district bond fund of school district number one." Said tax shall be payable in lawful money of the United States, and shall be used to pay interest and principal of said bonds and for no other purpose, and said tax shall be collected in the same manner and at the same time as the county taxes, and paid into the county treasury by the collector of taxes. [S. L. 1886, ch. 6, § 5.]

Redemption of bonds.

SEC. 4052. The said board of directors shall, each year after the fifth, retire as many of said bonds as can be redeemed with the amount of district bond fund at the time in the hands of the county treasurer, and in all cases such bonds shall be redeemed by the payment of number one first and proceeding consecutively upwards with those outstanding. All cancelled bonds shall be turned over to the board of directors as they shall direct. [S. L. 1886, ch. 6, § 6.]

Pledge of taxable property.

SEC. 4053. All taxable property of said school district as it now stands is hereby pledged to the payment of the principal and interest of said bonds, and it shall not be lawful to use or divert any portion of said district bond fund for any purpose whatever except the payment of said principal and interest. [S. L. 1886, ch. 6, § 7.]

Custody of funds.

SEC. 4054. The county treasurer of Uinta County shall have the custody of all funds realized from the sale of such bonds and shall pay the same out upon the written order of said committee signed by its chairman and attested by its clerk, taking the receipt in all cases of the person in whose favor said order is drawn, which order and receipt shall be his voucher for moneys so paid. [S. L. 1886, ch. 6, § 8.]

Treasurer's compensation.

SEC. 4055. The county treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of the bonds as may be allowed by said board of directors, not to exceed two per centum on each dollar actually received and disbursed by him upon the order or orders of said committee, but he shall not receive any compensation on any sum or sums turned over by him to his successor in office. [S. L. 1886, ch. 6, § 9.]

CHAPTER 7.

UINTA COUNTY, DISTRICT NO. 6. (BONDS OF 1884.)

SECTION.
4056. Authority to erect building and issue bonds.
4057. Letting contract for construction.
4058. Terms of bonds.
4059. Registration of bonds.
4060. Execution of bonds.
4061. Interest coupons.
SECTION.
4062. Annual bond tax.
4063. Redemption of bonds.
4064. Pledge of taxable property.
4065. Custody of funds—Separate bond of treasurer.
4066. Treasurer's compensation.

Authority to erect building and issue bonds.

SEC. 4056. The board of directors of school district number six, in the County of Uinta, and Territory of Wyoming, are hereby authorized to build, or cause to be built, a school house in said district, upon any site to be by them selected, within the limits of said school district number six, and for such purpose they are hereby authorized to issue the bonds of said school district for any sum not to exceed fifteen hundred dollars, which said school house shall be built and bonds issued only under and by virtue of the provisions of this chapter; *Provided*, That the qualified electors of said district shall so elect and determine, at any regular annual district meeting, or at any special meeting held for such purpose. [S. L. 1884, ch. 98, § 1.]

Letting contract for construction.

SEC. 4057. If it be the will of a majority of such electors, as indicated by any such election, then it shall be the duty of said board of directors, and they are hereby vested with full power to make all necessary arrangements and contracts for the building of said school house in such manner as said board may deem for the interest of said school district, and it shall be the duty of said board of directors to proceed at once to settle upon plans and specifications for the erection of said school house, and to let the contract or contracts for the construction of the same, and they may exact a bond from any contractor in double the amount of his contract, with good and sufficient sureties, for the faithful execution of such contract as may be awarded to him. [S. L. 1884, ch. 98, § 2.]

Terms of bonds.

SEC. 4058. Said board of directors shall issue school house bonds for the amount mentioned in section four thousand and fifty-six, or so much thereof as shall be sufficient for the purpose contemplated by this chapter; said bonds shall be issued in sums not less than fifty dollars, and shall be redeemed by said district within a period not exceeding ten years, and not less than one year from date of issue, and shall bear interest not to exceed the rate of eight per centum per annum on each dollar of their face, the rate of interest to be determined by said board of directors; said bonds shall be numbered from one upwards, and before being issued shall be registered by the county treasurer of said Uinta County. [S. L. 1884, ch. 98, § 3.]

Registration of bonds.

SEC. 4059. The county treasurer of said Uinta County shall keep a book in which shall be registered all of such bonds, showing the number of the bond, the date of issue, to whom issued, amount, number of coupons, date of redemption, date of registry, and payment of interest, which book shall, during business hours, be open to inspection. [S. L. 1884, ch. 98, 4.]

Execution of bonds.

SEC. 4060. All bonds issued by virtue of this chapter shall be signed by the director of the board of said district, countersigned by the county treasurer of said Uinta County, and attested by the clerk of said district, with the seal of said district attached, which shall be provided for such purpose, and other purposes provided by law, and no bonds shall be sold for less than the par value, and shall not be sold until thirty days notice shall have been given in some newspaper of general circulation in the Territory of Wyoming. [S. L. 1884, ch. 98, § 5.]

Interest coupons.

SEC. 4061. Said bonds shall have coupons attached, representing the interest to be paid each year, and the coupons representing the interest shall be detached from the bond before presentation for payment of the interest for the year corresponding, and shall be forthwith cancelled by the county treasurer by writing the word "cancelled" across the face thereof, and the interest on all bonds shall be payable at the county treasury of Uinta County, and may be payable annually or semi-annually as the board of directors may deem advisable. [S. L. 1884, ch. 98, § 6.]

Annual bond tax.

SEC. 4062. There shall annually be levied by the board of county commissioners of said Uinta County, on all taxable property within the limits of said school district, a tax not to exceed six mills on the dollar of valuation, which tax shall be known as the school house bond fund of school district number six, and said tax shall be payable in gold or silver coin, or in United States treasury notes or national bank notes, and shall be used to pay interest or principal of said bonds, and for no other purpose, and said tax shall be collected in the same manner as county taxes, and paid into the county treasury by the collector of taxes. [S. L. 1884, ch. 98, § 7.]

Redemption of bonds.

SEC. 4063. The said board of directors shall, each year after the first, retire as many of said bonds as can be redeemed with the amount of said school house bond fund at the time in the hands of the county treasurer. In all cases said bonds shall be redeemed by the payment of number one first, and proceeding consecutively upwards with those outstanding. All bonds when redeemed shall immediately be cancelled by the county treasurer in such manner as said board of directors may direct. [S. L. 1884, ch. 98, § 8.]

Pledge of taxable property.

SEC. 4064. All taxable property of said school district, as it now stands, is hereby pledged to the payment of the principal and interest of said bonds, in the manner herein provided, and it shall not be lawful to use or divert any portion of said school house bond fund for any purpose whatever except the payment of said principal and interest. [S. L. 1884, ch. 98, § 9.]

Custody of funds—Separate bond of treasurer.

SEC. 4065. The said board of directors shall negotiate the sale of said bonds, but the county treasurer of said Uinta County shall have the custody of all funds realized from such sale, and shall pay the same out on the written order of said board of directors, or a majority thereof, taking the receipt in every case of the person in whose favor said order is drawn, which order and receipt shall be his voucher for money so paid out; and it shall be the duty of said board of directors of said school district to exact of said county treasurer a separate bond, to be made to school district number six, in Uinta County, in Wyoming Territory, in such sum as they may deem proper, with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him by this chapter, and the faithful accounting for the moneys deposited with him and realized from the sale of bonds, as herein provided for and such treasurer's bond shall be and remain in the custody of said board of directors. [S. L. 1884, ch. 98, § 10.]

Treasurer's compensation.

SEC. 4066. The county treasurer shall receive such compensation for receiving and disbursing the funds realized from the sale of bonds as may be allowed to him by such board of directors, not to exceed two per centum on each dollar actually received and disbursed upon the order or orders of such board of directors, but he shall receive no commission on any sum or sums turned over by him to his successor in office. [S. L. 1884, ch. 98, § 11.]

TITLE 47. SEAL OF THE TERRITORY.

SECTION 4067. Description of seal.

Description of seal.

SEC. 4067. The seal of the Territory of Wyoming shall be of the following design, namely: A Norman shield, on the upper half of which is emblazoned a mountain scene with a railroad train, the sun appearing above the horizon, the figures "1869" below the middle point of the top of the shield. On the first quarter below on a white ground a plow, a pick, a shovel, and a shepherd's crook; on the next quarter namely the lower point of the shield on a red ground, an arm upholding a drawn sword; the shield to be surmounted by the inscription, "*Cedant arma togæ*," and the entire design surrounded by the words, "TERRITORY OF WYOMING GREAT SEAL." [S. L. 1882, ch. 94, § 2.]

TITLE 48. SEAT OF GOVERNMENT.

SECTION 4068. Located at Cheyenne.

Located at Cheyenne.

SEC. 4068. The seat of government for the Territory of Wyoming is hereby located and established at the City of Cheyenne, in the County of Laramie. [C. L. 1876, ch. 104, § 1.]

TITLE 49. SPECIAL PARTNERSHIPS.

CHAPTER I. FORMATION AND REGULATION OF.

SECTION.
4069. For what purposes formed.
4070. General and special partners.
4071. Requisites of certificates.
4072. Acknowledgment and recording of certificates—Liability for false statement.
4073. Affidavit as to contribution by partners to be filed.
4074. When partnership complete.
4075. Publication of certificate.
4076. Affidavit of publication.
4077. How special partnership renewed.
4078. Authority of general partners.
4079. Authority of special partners.
4080. Claims of special partner against partnership.
4081. Actions by and against partnership.
4082. Special partner not to withdraw capital.

SECTION.
4083. Special partners interest in profits.
4084. Liability of special partner withdrawing capital.
4085. Special partnerships cannot give preference to creditors.
4086. Liability of general partners.
4087. Liability of special partner.
4088. Liability of special partner for unintentional act.
4089. Estoppel of third persons contracting with partnership.
4090. When special partnership becomes general.
4091. How new special partner admitted.
4092. Dissolution, how effected.
4093. Manner of using name of special partner.

For what purposes formed.

SEC. 4069. A special partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance. [S. L. 1877, p. 84, § 1.]

General and special partners.

SEC. 4070. A special partnership may consist of one or more persons, called general partners, and one or more persons, called special partners. [S. L. 1877, p. 84, § 2.]

Requisites of certificate.

SEC. 4071. Persons desirous of forming special partnerships must severally sign a certificate, stating:

First—The name under which the partnership is to be conducted;

Second—The general nature of the business intended to be transacted;

Third—The names of all the partners and residences, specifying which are general and which are special partners;

Fourth—The amount of capital which each special partner has contributed to the common stock;

Fifth—The periods at which such partnerships will begin and end. [S. L. 1877, p. 84, § 3.]

Acknowledgment and recording of certificate—Liability for false statement.

SEC. 4072. Certificates under the last section must be acknowledged by all partners before some officer authorized to take the acknowledgment of deeds, one to be filed in the office of the county clerk, and the other recorded in the office of the register of deeds of the county in which the principal business of the partnership is situated, in a book to be kept for that purpose, open to public inspection, and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the register of deeds in whose office it is recorded, must be filed in the office of the county clerk and recorded in like manner in the office of the register of deeds in every such county. If any false statement is made in such certificate, all the persons interested in the partnership are liable as general partners for all the engagements thereof. [S. L. 1877, p. 84, § 4.]

Affidavit as to contribution by partners to be filed.

SEC. 4073. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners have been actually and in good faith paid in the lawful money of the United States, must be filed in the same office with the original certificate. [S. L. 1877, p. 84, § 5.]

When partnership complete.

SEC. 4074. No special partnership is formed until the provisions of the last five sections are complied with. [S. L. 1877, p. 85, § 6.]

Publication of certificate.

SEC. 4075. The certificate mentioned in this chapter, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the territory, nearest thereto; such publication must be made at least once a week for four successive weeks, beginning within one week from the time of filing the certificate; in case such publication is not made the partnership must be deemed general. [S. L. 1877, p. 85; § 7.]

Affidavit of publication.

SEC. 4076. An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher or chief clerk of the newspaper in which such publication is made, may be filed with the register of deeds with whom the original certificate was filed, and is presumptive evidence of the facts therein stated. [S. L. 1877, p. 85, § 8.]

How special partnership renewed.

SEC. 4077. Every renewal or a continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation. [S. L. 1877, p. 85, § 9.]

Authority of general partners.

SEC. 4078. The general partners only have authority to transact the business of a special partnership. [S. L. 1877, p. 85, § 10.]

Authority of special partners.

SEC. 4079. A special partner may at all times investigate the partnership affairs and advise his partners or their agents as to their management. [S. L. 1877, p. 85, § 11.]

Claims of special partner against partnership.

SEC. 4080. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor; and as to such loans or advances, has the same rights as any other creditor, but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied. [S. L. 1877, p. 85, § 12.]

Actions by and against partnership.

SEC. 4081. In all matters relating to a special partnership its general partners may sue and be sued alone, in the same manner as if there were no special partners. [S. L. 1877, p. 85, § 13.]

Special partner not to withdraw capital.

SEC. 4082. No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership during its continuance. [S. L. 1877, p. 85, § 14.]

Special partner's interest in profits.

SEC. 4083. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses. [S. L. 1877, p. 86. § 15.]

Liability of special partner withdrawing capital.

Sec. 4084. If a special partner withdraws capital from the firm, contrary to the provisions of this chapter, he thereby becomes a general partner. [S. L. 1877, p. 86, § 16.]

Special partnerships cannot give preference to creditor.

Sec. 4085. Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof, and every judgment confessed, lien created or security given, in like manner, and with the like intent, is in like manner void. [S. L. 1877, p. 86, § 17.]

Liability of general partners.

Sec. 4086. The general partners in a special partnership are liable to the same extent as partners in a general partnership. [S. L. 1877, p. 86, § 18.]

Liability of special partner.

Sec. 4087. The contributions of a special partner to the capital of a firm and the increase thereof is liable for its debts, but he is not otherwise liable therefor, except as follows:

First—If he has wilfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed thereunto or the published announcement thereof, he is liable as a general partner to all creditors of the firm;

Second—If he has wilfully interfered with the business of the firm, except as permitted by the provisions of this chapter, he is liable in like manner;

Third—If he has wilfully joined in or assented to an act contrary to any of the provisions of this chapter, he is liable in like manner. [S. L. 1877, p. 86, § 19.]

Liability of special partner for unintentional act.

Sec. 4088. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby, to his prejudice. [S. L. 1877, p. 86, § 20.]

Estoppel of third persons contracting with partnership.

Sec. 4089. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards change the persons, thus named, as general partners upon that contract by reason of an error or defect in the proceedings for the creation of the special partnership prior to the acceptance of the memorandum, if an effort has been made by the partners in good faith to form a special partnership in the manner required by this chapter. [S. L. 1877, p. 86, § 21.]

When special partnership becomes general.

Sec. 4090. A special partnership becomes general if, within ten days after any partner withdraws from it, or if any new partner is received into it, or a change is made in the nature of its business, or its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk and register of deeds with whom the original certificate of the partnership was filed, and notice thereof published, as is provided by this chapter for the publication of the certificate. [S. L. 1877, p. 87, § 22.]

How new special partner admitted.

Sec. 4091. New special partners may be admitted into a special partnership upon a certificate stating the names, residences and contributions to the common stock of each of them and by the general partners, verified, acknowledged or proved, according to the provisions of this chapter, and filed with the county clerk and register of deeds with whom the original certificate of the partnership was filed. [S. L. 1877, p. 87, § 23.]

Dissolution, how effected.

SEC. 4092. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete until a notice thereof has been filed and recorded in the office of the county clerk and register of deeds with whom the original certificate was filed, and published once in each week for four successive weeks in a newspaper printed in each county where the partnership has a place of business. [S. L. 1877, p. 87, § 24.]

Manner of using name of special partner.

SEC. 4093. The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited." [S. L. 1877, p. 87, § 25.]

TITLE 50. STOCK LAWS.

CHAPTER 1. BRANDS.
CHAPTER 2. MAVERICKS AND ROUND-UPS.
CHAPTER 3. RESTRICTIONS UPON STOCKMEN, AND OFFENSES AGAINST STOCK LAWS.
CHAPTER 4. SHEEP.
CHAPTER 5. SWINE AND GOATS.
CHAPTER 6. WIND RIVER VALLEY STOCK GROWERS' ASSOCIATION.
CHAPTER 7. ESTRAYS.
CHAPTER 8. FENCES.
CHAPTER 9. INDEMNITY FOR STOCK KILLED BY RAILWAYS.
CHAPTER 10. VETERINARIAN AND CONDEMNATION OF DISEASED STOCK.

CHAPTER 1.

BRANDS.

SECTION.
4094. Who shall have a brand—Brand record.
4095. Person cannot adopt brand of another.
4096. When stock to be branded and when branding prohibited.
4097. Penalty for recording brand of another.
4098. Clerk recording same brand to two persons—Penalty.
4099. Mis-branding stock—Penalty.
4100. Stock grower defined—To brand stock—Transfer of brands.

SECTION.
4101. Mis-branding or defacing brands—Penalty.
4102. Stock drover defined—To brand stock.
4103. Brand committee—Authority to reject brands.
4104. Proceedings when branded stock brought into county.
4105. Conflicting brands—Rules for determining.
4106 Violating last three sections—Penalty.

Who shall have a brand—Brand record.

SEC. 4094. Every person having cattle, hogs, sheep, or other live stock, shall have a mark or brand, different from the mark or brand of his neighbors, and he or she shall deliver to the county clerk a description of their mark or brand, and such clerk shall record the same in a well bound book kept by him for that purpose. [C. L. 1876, ch. 105, p. 538, § 1.]

Person cannot adopt brand of another.

SEC. 4095. No person shall have, or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person. [C. L. 1876, ch. 105, p. 538, § 2.]

When stock to be branded and when branding prohibited.

SEC. 4096. Every person shall mark or brand all his hogs, sheep, cattle, or other stock over six months old, and if any dispute arise about the question of whose mark or brand any particular mark or brand may be, the same shall be decided by the county clerk's record; *Provided*, That between the fifteenth day of February and the beginning of the general spring round-up of each year, in each round-up district, and not then in advance of said round-up, no person shall brand any neat cattle which are running at large. Any person violating the provisions of this proviso shall be deemed and adjudged guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not less than fifty dollars nor more than one hundred dollars for each and every animal thus branded, or by imprisonment in the county jail for a term not exceeding six months, or may be punished by both such fine and imprisonment in the discretion of the court. [C. L. 1876, ch. 105, p. 538, § 3. S. L. 1884, ch. 88, § 1.]

Penalty for recording brand of another.

SEC. 4097. If any person shall, knowingly or willingly, have a mark or brand recorded which is already recorded to another person in the same county, he shall be fined not less than fifty dollars nor more than one hundred dollars. [C. L. 1876, ch. 105, p. 538, § 4.]

Clerk recording same brand to two persons—Penalty.

SEC. 4098. If any county clerk shall record the same mark or brand to more than one person, he shall forfeit and pay to the use of the county a fine of not less than fifty nor more than one hundred dollars. [C. L. 1876, ch. 105, p. 538, § 5.]

Mis-branding stock—Penalty.

SEC. 4099. Every person who shall wilfully, and with intent to defraud, mis-brand or mis-mark any stock not his own, shall forfeit and pay not less than fifty and not to exceed one hundred dollars, and shall be imprisoned in the county jail where said act is committed not to exceed six months, nor less than one month. [C. L. 1876, ch. 105, p. 538, § 6.]

Stock grower defined—To brand stock—Transfer of brands.

SEC. 4100. Every person who shall keep neat cattle, horses, mules, sheep or goats for their growth or increase, within the territory, shall be deemed a stock grower; and every stock grower shall have a brand or mark, or both, which he shall cause to be recorded in the office of the clerk of each of the counties where he may keep any of the live stock enumerated, and shall cause all such live stock to be distinctly branded or marked; *Provided*, That no stock grower shall adopt a mark or brand of another; neither shall the county clerk record the same brand to more than one person; *Provided*, That nothing in this proviso shall prevent one person from adopting the brand of another and causing the same to be recorded, after purchase of such brand, and record of bill of sale of such purchaser; *And, provided further*, If any stock grower or other person shall intentionally do any act prohibited by this section, or refuse or intentionally neglect to do any act herein required, he shall forfeit and pay to the county a fine not exceeding one hundred dollars. [C. L. 1876, ch. 105, p. 539, § 2.]

All stock over six months old must be branded, § 4096.

Mis-branding or defacing brands—Penalty.

SEC. 4101. Any person who shall, with intent to defraud, brand or mis-brand, mark or mis-mark, any neat cattle, horse, sheep, goat, ass or mule not his own; any person who shall intentionally brand over a previous brand, or in any manner deface or obliterate a previous brand, or shall cut out or obliterate a previous mark on any neat cattle, horse, sheep, goat, ass or mule, shall be deemed guilty of a felony, and, on conviction, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the penitentiary not exceeding five years, or both. [C. L. 1876, ch. 105, p. 539, § 3. S. L. 1879, ch. 73, §§ 2 and 3.]

Stock drover defined—To brand stock.

SEC. 4102. Any person who shall drive or bring any neat cattle, sheep or horses to or through this territory, shall be deemed a stock drover, and every stock drover who shall neglect or fail to distinctly brand or mark all neat cattle, sheep or horses, before driving them over any portion of this territory, shall be deemed guilty of a misdemeanor, and on conviction, shall pay a fine to the county not exceeding one hundred dollars. [S. L. 1886, ch. 22, § 1.]

Brand committee—Authority to reject brands.

SEC. 4103. The authority of deciding whether a brand offered for record does or does not conflict with any previously recorded brand, shall be vested in a committee of three, consisting of the county clerk and two respectable stock owners of the county; said committee shall be a permanent one; the two stock owners shall be appointed by the county commissioners; they shall be men of good judgment and experience in brands, and when practicable shall be chosen from those largely interested in cattle. Vacancies occurring in the two memberships, other than the county clerk, shall be filled by the county commissioners. All brands offered for record shall be submitted, before acceptance, to this committee; the objection of any two shall reject a brand. It shall be the duty of the county clerk to file all brands offered for record pending the examination, which he shall cause to be made as promptly as possible, and if said brand is accepted, the ownership shall date from date of filing. [S. L. 1877, p. 124, § 1.]

Proceedings when branded stock brought into county.

SEC. 4104. It shall be the duty of any person who brings into any county of this territory and turns loose for grazing purposes any herd, band or individual animals already branded, to lay before the above committee a statement of the brands of said animals, and if, in the judgment of any two of them, said brand conflict with any previously recorded in that county, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands then recorded; this distinguishing brand may then be recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the above shall render the party so failing liable for all damages resulting from such failure, which damages may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county of this territory, whose brands are considered by this committee to infringe on previously recorded ones. [S. L. 1877, p. 125, § 3.]

Conflicting brands—Rules for determining.

SEC. 4105. In deciding as to the conflict of brands, the committee will reject any one that, being the same as one previously recorded, has in addition any of the following, whether placed across, above, below, at either side or encircling the main brand, viz: a straight bar, a quarter, half, or entire circle, a quarter, half, or entire diamond, either upright or inverted, the same not constituting a true brand, and rendering the owner of the same brand liable to damage by its use; saving only when one or more of these shall be filed by the owner of the first record of the main brand, in which case it may be accepted. The committee shall reject any brand formed by repetition of any letter, number or figure which shall have been previously recorded, whether to be placed on the same or on a different part of the animal; the exclusive right of the first record to the letter, number or figure and to repetition of it being re-affirmed. A variation in size of a letter, number or figure shall not constitute a new brand and shall be rejected. A combination of letters, numbers or figures may be permitted, though the same letters, numbers or figures may have been recorded singly or together, if in the judgment of the whole committee, said combination is so different from any previous record as to constitute a new brand, with no danger of infringement; but in this case the objection of one member shall reject. But any party offering a brand for record that is believed, by the brand committee, to conflict with a brand previously recorded, shall be entitled to have the same recorded by bringing to the committee and filing with the county clerk the written consent of the party owning the brand first recorded. [S. L. 1877, p. 125, § 4. S. L. 1879, ch. 72, § 1.]

Violating last three sections—Penalty.

SEC. 4106. Any person or persons who shall violate or fail to obey the provisions of the last three preceding sections shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not exceeding five hundred dollars and by imprisonment not exceeding six months. [S. L. 1879, ch. 72, § 2.]

CHAPTER 2.

MAVERICKS AND ROUND-UPS.

SECTION.
4107. Mavericks defined.
4108. Round-up, to be controlled by stock growers' association.
4109. Duties of foremen of round-up—Filling vacancy.
4110. Care and branding of cattle of unknown owner.
4111. Branding of mavericks—Report of foreman.
4112. Sale of mavericks—Return of proceeds—Bond of foreman.

SECTION.
4113. Bill of sale of mavericks sold.
4114. Disposition of proceeds—Compensation to owner—Membership in association.
4115. When branding mavericks unlawful.
4116. Returns of round-up foreman subject to inspection.
4117. Change of round-up district—Term of foreman.
4118. Penalty for violating this chapter.

Mavericks defined.

SEC. 4107. All neat cattle, regardless of age, found running at large in this territory without a mother, and upon which there is no brand, shall be deemed mavericks, regardless of any ear mark or wattle which may be upon them. [S. L. 1884, ch. 87, § 1. S. L. 1886, ch. 28, § 1.]

Round-ups to be controlled by stock growers' association.

SEC. 4108. At a time not later than the first Monday of April of each year, the Wyoming Stock Growers' Association shall hold its annual meeting, and, pursuant to its by-laws and rules to that end, shall, in open meeting, at which all of its members may be present and acting, district the entire Territory of Wyoming into round-up districts, numbering each, and shall, at such meeting, elect a foreman for each of such round-up districts, and who shall, when thus elected, be the foreman of the two general round-ups to be had in such district, as hereinafter provided, for the ensuing work season; and if, in the judgment of such meeting, it shall be deemed necessary to elect an assistant foreman for any of said districts, then they shall elect such assistants for such districts as may seem meet and judicious to them; and in each round-up district thus created and formed, there shall be two general round-ups each year, the one to be known as the general spring round-up and the other to be known as the general fall round-up; and at such meeting it shall decide and fix the time when and the place where each round-up shall begin its work, and how each shall be worked, and that each cattle range, in each round-up district, shall be worked in its order; and if, for any reason it shall not be worked by the round-up, then the owners thereof may proceed and work the same; and each of said round-ups shall begin at the time and place thus designated, and shall work in the manner thus decided upon, and in no other. [S. L. 1884, ch. 87, § 2.]

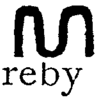
Duties of foreman of round-up—Filling vacancy.

SEC. 4109. It shall be the duty of said foremen to take charge of the round-ups for which he has been elected, pursuant to the preceding, section, and to control the same; and it is hereby made the duty of all persons working in either of said round-ups, to obey all orders of the foreman thereof, in so far as the same shall appertain to the working thereof, and if any foreman or assistant foreman shall be unable to perform his duties as such, by reason of sickness, accident or refusal to serve, then, and in that event, the owners of neat cattle whose home range is in said round-up district, and who shall be working in such round-up at the time, and, in the event of their absence, then the person having charge of and representing their interests in said round-up, shall elect some fit and competent person, one acquainted with the country to be worked, to fill such vacancy and to perform the duties of such foreman until the said foreman shall appear at his post and report for duty; and at such election the person receiving a majority of all the votes cast shall be declared elected; and the person thus elected shall have like authority and the same duties as though elected by said association in the first instance. [S. L. 1884, ch. 87, § 3.]

Care and branding of cattle of unknown owner.

SEC. 4110. It is hereby made the further duty of said foreman to give especial heed to the care of all branded neat cattle, the ownership of which is unknown, and said foreman shall brand, or cause to be branded, the calves of all cows found in such round-up with the same brand that is upon its mother, provided the ownership of such cow is unknown, and to that end shall have full authority to instruct any person or persons working in said round-up to thus brand such calves, and the person or persons thus instructed to brand any of such calves shall at once do so. Any person violating the provisions of this section shall be deemed and adjudged guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than double the value of each calf not thus branded, or by imprisonment in the county jail for a term not less than ten days for each calf they fail thus to brand, or by both fine and imprisonment. [S. L. 1884, ch. 87, § 4.]

Branding of mavericks—Report of foreman.

SEC. 4111. All mavericks as defined by this chapter shall be taken up by the foreman of the round-up where found, and shall be by him or under his direction branded with the brand of the purchaser thereof, as hereinafter provided for, and shall also be branded on the left side of the neck with the brand of said association, namely:  Said brand, when used on the left side of the neck of any animal, is hereby declared to be the brand of said association, and no person or persons, company or corporation, other than said association, shall have the right to use the same on the left side of the neck, and such foreman shall keep an accurate statement, in writing, of each maverick, showing each one thus branded, its age, as near as may be, sex, color and grade; which statement shall be made at the time of such branding, upon blanks furnished him by said association for such purpose; and at the close of each of said round-ups, he shall return such written statement to said association, together with his verification thereto, duly verified before some officer authorized to administer oaths, and which shall be in substance as follows: A——— B———, being first duly sworn, on his oath says that the above and foregoing statement of mavericks, by him subscribed, is just, full and true; that the same truly represents and shows the exact number branded by him in the brand of——— thus———upon the general————round-up, and also truly shows the ages of each thereof, as nearly as he could judge, and the sex and color of each, and that affiant branded or caused to be branded in the brand of said———all mavericks found on said round-up; and that each thereof was branded on the left side of the neck with the brand of the Wyoming Stock Growers' Association pursuant to law, thereby showing such animals had been sold as mavericks.

A———— B————.

Subscribed and sworn to before me this————day of ————, A. D. 18—. [S. L. 1884, ch. 87, § 6.]

Sale of mavericks—Return of proceeds—Bond of foreman.

SEC. 4112. All mavericks that may be found in each days work in any round-up district, shall be sold on the same day to the highest bidder, but notice thereof shall first be given by the round-up foreman of the time and place of sale, and said notice shall be given in such manner and for such time before such sale as will permit all persons in the round-up to be present thereat. Such sale to be made by the foreman for cash or certified check, and in no other manner. The animals gathered in any one day may be sold singly or in lots, at the discretion of the owners of neat cattle whose home range is in said round-up district, and who shall be working in such round-up at the time, and in event of their absence then the person having charge of and representing their interests in said round-up; but each sale thus made shall be to a single person, firm or corporation, and his or their brand, together with the association brand, and no other, shall be placed upon such animal or animals, under the supervision of the round-up foreman. And he shall within thirty days after such sale turn over the full amount received therefrom to the secretary of said association, less ten per cent. thereof, which he shall retain as his fee and commission for making such sale. And prior to entering upon his duties as foreman he shall give a bond to the said association, with one or more sufficient sureties, to be approved by the president or secretary of said association, in the sum of three thousand dollars, conditioned for the faithful performance of his duties, and that he will well and truly pay over all sums received by him for the use of said association as is in this section provided. [S. L. 1884, ch. 87, § 7. S. L. 1886, ch. 28, § 2.]

Bills of sale of mavericks sold.

SEC. 4113. It shall be the duty of such foreman, upon receipt by him of the money for such mavericks thus sold, to make in due form a bill of sale, which he shall execute as foreman of such round-up, transferring said mavericks thus sold to the purchaser or purchasers thereof; and such bill of sale shall transfer and vest in such purchaser the full title to each and all of the mavericks thus transferred. The said foreman shall transmit a copy of each of said bills of sale to the secretary of said association at the same time he shall transmit the moneys and proceeds of such sales to that officer. [S. L. 1884, ch. 87, § 8.]

Disposition of proceeds—Compensation to owner—Membership in association.

SEC. 4114. The proceeds arising from such sales shall be covered into the treasury of said association, to be by it used in the payment of cattle inspectors, and other like purposes; and if any neat cattle thus sold shall, within the period of six months immediately ensuing the day of the execution of said bill of sale, be claimed, identified and proven as the property of any person, it shall be the duty of said association to forthwith pay the owner thereof the market value of such animal, which shall be determined by satisfactory evidence. The amount of money recoverable by the purchaser of a branded animal shall be limited to the amount paid by him for such animal, the owner of the original brand retaining the animal. But in the event any animal shall not be thus claimed, identified and proven within said time, then and in such case, said money shall become the property of said association, and shall be used by it for the purposes aforesaid. And hereafter, all persons who are directly interested in the business of cattle growing in this territory, and who have not been convicted of a felony, or possessed of a reputation notoriously bad, shall, on application therefor, and on a full compliance with the by-laws of said association governing such admission, be admitted a full member of said association, with like powers, duties and responsibilities enjoyed and possessed by all the members thereof. [S. L. 1884, ch. 87, § 9. S. L. 1886, ch. 28, § 3,]

When branding mavericks unlawful.

SEC. 4115. It shall be unlawful for any person at any time to brand any maverick, except as hereinbefore provided under the supervision of the district round-up foreman. [S. L. 1886, ch. 28, § 4.]

Returns of round-up foreman subject to inspection.

SEC. 4116. It is hereby made the duty of said association, during all reasonable business hours, to keep open for the inspection of all persons, the returns of round-up foremen, showing the mavericks branded pursuant to this chapter. [S. L. 1884, ch. 87, § 10.]

Change of round-up district—Term of foreman.

SEC. 4117. No round-up district shall be changed or its boundaries in any way altered, save at the annual meeting of said association, to be held in April of each year; and each round-up foreman that is elected at such meeting, shall be elected for, during and until the close of the ensuing general fall round-up. [S. L. 1884, ch. 87, § 11.]

Penalty for violating this chapter.

SEC. 4118. Any person violating any of the foregoing provisions of this chapter, except such as are included in section forty-one hundred and ten, shall be deemed and adjudged guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty dollars, nor more than one hundred dollars, and shall be confined until such fine and the cost of the prosecution thereof shall be paid, or shall be imprisoned in the county jail not less than ten nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. [S. L. 1886, ch. 28, § 5.]

CHAPTER 3.

RESTRICTIONS UPON STOCKMEN, AND OFFENSES AGAINST STOCK LAWS.

SECTION.
4119. Stock drover failing to separate domestic stock from herd—Penalty.
4120. Drover keeping herd near ranch—Penalty.
4121. Driving cattle off their range—Penalty.
4122. Permitting stock to mix, or trespass on land, unlawful.
4123. Unlawfully driving off stock deemed larceny.
4124. Drover shall separate domestic stock from herd.
4125. Bill of sale must be given on sale of stock.
4126. Restrictions on purchasing or slaughtering cattle and on selling hides.
4127. Butchers to exhibit hides of slaughtered cattle.
4128. Who may remove hides from carcass.
4129. When hides to be kept twenty days.
4130. Penalty for violating last five sections.
4131. Running cattle with dogs—Penalty.
SECTION.
4132. Proceedings to exterminate vicious dogs.
4133. Cattle destroying hay may be driven with dogs.
4134. Limitation upon last three sections.
4135. Restrictions on permitting stallions to run at large.
4136. Restrictions on bulls running at large in Albany County.
4137. Penalty for violating last section.
4138. Bulls may be taken up as estrays.
4139. Limitations upon last three sections.
4140. Stealing, embezzling, killing or unlawfully purchasing live stock.
4141. Description of neat cattle in indictment, etc.
4142. Presumptions in criminal cases concerning neat cattle.
4143. Stock detectives—Compensation and rewards.

Stock drover failing to separate domestic stock from herd—Penalty.

SEC. 4119. Any person who shall drive or bring any neat cattle, sheep or horses to or through this territory, shall be deemed a stock drover, and any stock drover who shall fail or neglect to carefully examine his herd of neat cattle, sheep or horses after driving them over any portion of this territory, and separate and drive away from his herd all neat cattle, sheep or horses not branded or marked, with his brand or mark, shall be deemed guilty of a misdemeanor, and on conviction, shall pay a fine to the county not exceeding one hundred dollars. [S. L. 1886, ch. 22, § 1.]

Drover keeping herd near ranch—Penalty.

SEC. 4120. Any stock drover who shall stop and keep a herd of neat cattle, sheep or horses, within three miles of the ranch of any stock grower of Wyoming Territory, for exceeding the space of two days shall forfeit and pay to the county in which said ranch shall be situated, the sum of one hundred dollars to be collected by the county commissioners in civil action; *Provided*, That nothing in this section shall be construed to affect parties holding stock for shipment within five miles of any railroad station. [S. L. 1882, ch. 99, § 2.]

Driving cattle off their range—Penalty.

SEC. 4121. Any cattle drover or other person who shall drive any neat cattle of another intentionally, or through neglect off the range where such cattle are accustomed to graze and feed, shall, on conviction, pay a fine not exceeding one hundred dollars, one-half of which shall be paid to the person or persons aggrieved. [C. L. 1876, ch. 105, p. 540, § 5.]

Permitting stock to mix, or trespass on land, unlawful.

SEC. 4122. Any person owning, or having charge of any drove of cattle, horses or sheep, numbering twenty head, or more than that number, in any such drove of cattle, horses or sheep, and shall drive the same into, or through any county of Wyoming, of which the owner, is not a resident or land owner or stock grower, and when the land in said county is already occupied and improved by settlers on ranches, it shall be the duty of said owner, or person in charge of said cattle, horses or sheep, to prevent the same from mixing with the cattle, horses or sheep, belonging to actual settlers, and also to prevent said drove of cattle, horses or sheep, from trespassing on such land as may be the property of the actual settler, and used by him for the grazing of animals, or growing of hay or timber; or of doing injury to the ditches made for the irrigation of crops. If any owner or owners, or person in charge of any such drove of cattle, horses or sheep, shall wilfully injure any resident in the territory, by driving said drove of cattle, horses or sheep from the public highways, and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor, and shall be punished by a fine of not less than twenty dollars, nor more than one hundred dollars, at the discretion of the court, and render the owner or owners, or person in charge of the drove of cattle, horses or sheep, liable for such damages as may be done to the property of said settler. [C. L. 1876, ch. 105, p. 541, § 2.]

Unlawfully driving off stock deemed larceny.

SEC. 4123. When the stock of any person shall be driven off its range within Wyoming, against his will, by the drovers of any drove, and the same shall be found among such drove, every person engaged as drover shall be liable to indictment for larceny, and may be fined in any sum not exceeding one thousand dollars, and shall be liable for damages to the party injured, to the amount of two hundred dollars, for each head so driven off, together with all costs accruing in the trial of said cause, and said herd or stock, shall be held liable for the same, or a sufficient number to cover all damages and costs. [C. L. 1876, ch. 105, p. 541, § 3.]

Drover shall separate domestic stock from herd.

SEC. 4124. When the stock of any resident of the Territory of Wyoming, shall intermix with any drove of any animals, it shall be the duty of the drover or drovers, or person in charge of such drove, to cut out and separate such stock from said droves immediately; every person, either owner, drover or otherwise, connected with said drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one thousand dollars, and shall be liable to indictment for larceny. [C. L. 1876, ch. 105, p. 541, § 4.]

Bill of sale must be given on sale of stock.

SEC. 4125. It shall be unlawful for any person in this territory to sell any neat cattle, horse, mare or gelding, goat, sheep, mule or ass, without giving a written bill of sale therefor; and it shall be unlawful for any person in this territory to purchase any neat cattle, horse, mare or gelding, goat, sheep, mule or ass, without receiving a bill of sale therefor; *Provided*, That if, at the time of sale of any of the foregoing enumerated stock, such stock is marked and branded, or either, with the brand and mark of the owner, the bill of sale shall contain a full description of such brands or marks, or either, as the case may be. [C. L. 1876, ch. 105, p. 542, § 9.]

Restrictions on purchasing or slaughtering cattle, and on selling hides.

SEC. 4126. No person shall purchase or kill in this territory any head of neat cattle until the same is distinctly marked or branded, or both; and every person engaged in slaughtering neat cattle in this territory shall keep a record of all cattle so slaughtered, naming the person or persons of whom purchased, and his or their place of residence, the age, sex and brand and marks of neat cattle slaughtered, which record shall at all times be open for the inspection of stock growers or their employes. It shall be unlawful to sell any hide of any head of neat cattle without giving the purchaser a bill of sale of such hide, and it shall be unlawful for any person to purchase any such hide in this territory without receiving a bill of sale therefor, and such bill of sale shall contain a full description of the owner's mark and brand and other marks and brands on such hide; *Provided*, That all first purchasers of hides in this territory shall keep a record of all hides of neat cattle purchased by them, which record shall state the name or names of the person or persons from whom purchased, and his, or their, place of residence, and all brands and marks on said hides, which record shall, at all times, be open for the inspection of stock growers, their agents and employes. [C. L. 1876, ch. 105, p. 542, § 10.]

Butchers to exhibit hides of slaughtered cattle.

SEC. 4127. Every butcher slaughtering neat cattle, shall keep the hides of such cattle at his place of slaughtering for a period of not less than seven days after such slaughtering, and such hides shall be subject to inspection by stock growers and their agents and employes. All persons, other than butchers, who occasionally slaughter neat cattle for beef, shall exhibit the hide, or hides, of such beef, at the time and place the beef is offered for sale. [C. L. 1876, ch. 105, p, 542, § 11.]

Who may remove hides from carcass.

SEC. 4128. It shall be unlawful for any person, other than the owner, or his agent, or employe, to skin or remove from the carcass, the skin, hide or pelt, of any neat cattle or sheep found dead. [C. L. 1876, ch. 105, p. 543, § 12.]

When hides to be kept twenty days.

SEC. 4129. All persons other than butchers who occasionally slaughter neat cattle for beef, either for home consumption or for other purposes, shall keep the hide or hides of such animals slaughtered, for a period of twenty days, subject to inspection by any person or persons. [S. L. 1879, ch. 70, § 1.]

Penalty for violating last five sections.

SEC. 4130. Any person who shall wilfully do any act prohibited by the last five preceding sections, or who shall wilfully neglect, or refuse, to do any act herein required, shall be guilty of a misdemeanor, and, on conviction, shall be punished by imprisonment in the county jail for a period not exceeding two years, or pay a fine not exceeding one thousand dollars, or both, in the discretion of the court. [C. L. 1876, ch. 105, p. 543, § 14.]

Running cattle with dogs—Penalty.

SEC. 4131. Any person or persons who shall be detected running cattle or other stock with dogs, from any watering place, hay bottom, hay stack or on any cattle range in the territory, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than one hundred dollars for each and every offense. All fines collected in accordance with this section shall be paid half to the officer enforcing the law and half into the county fund of the county in which the offense is committed. [S. L. 1879, ch. 74, § 1. S. L. 1886, ch. 80, § 1.]

Proceedings to exterminate vicious dogs.

SEC. 4132. In case there may be dogs that are in the habit of running cattle or other stock voluntarily without being sent or ordered to do so, it shall be lawful for any person or persons seeing any dog or dogs running or returning from having run cattle or other stock, for such person or persons, if so inclined, to follow said dog or dogs to the home of the owner, in order to be satisfied to whom the dog or dogs belong; he shall then notify any justice of the peace or constable of the county, who shall proceed to take up and confine any dog or dogs guilty of such actions, and if the owner thereof does not pay the fine above mentioned within fifteen days after the dog or dogs are taken up, it shall be the duty of the officer having them confined to kill them. [S. L. 1879, ch. 74, § 2.]

Cattle destroying hay may be driven with dogs.

SEC. 4133. In case any drover or drovers passing through any county or counties of this territory, shall allow their cattle to destroy any hay in stacks, or hay still uncut, regardless of the interests of the ranchmen or settlers, this law shall not apply, and such ranchmen or settlers will be protected under the law in driving such herds so specified above with dogs or anything else. [S. L. 1879, ch. 74, § 3.]

Limitation upon last three sections.

SEC. 4134. The last three preceding sections shall not in any way interfere with any person driving his own stock with dogs or any other person's stock from his own claim with dogs; *Provided*, That all persons driving stock from their claims shall be liable to the owner of such stock for all damages done to such stock while being driven from his claim, either with or without dogs. [S. L. 1879, ch. 4, § 4. S. L. 1886, ch. 80, § 2.]

Restrictions on permitting stallions to run at large.

SEC. 4135. No mustang or other inferior stallion, over the age of eighteen months, shall be permitted to run at large in the Territory of Wyoming, nor shall any stallion over the age of eighteen months be permitted to run at large in the said territory, within five miles of any city, town or village; the owner or owners, or person or persons in charge of such animal or animals, as are prohibited from running at large by this section, who shall permit such animal or animals to run at large, may be fined for each offense not less than fifty dollars, nor more than two hundred dollars, and it shall be lawful for any person to castrate or cause to be castrated any such animal or animals running at large; *Provided*, That it shall be lawful for any person or persons, who shall find any such animal or animals running at large, as hereinbefore described, to take up such animal or animals, and keep the same in some secure inclosure, stable or corral, and take good care of such animal or animals so taken up, and it shall be the duty of such person or persons to immediately notify the owner or owners of such animal or animals so taken up, if such owner or owners are known to such person or persons having taken up such animal or animals, and if said owner or owners are unknown to said person or persons, to immediately give notice by publication in some newspaper in the county in which such animal or animals shall have been taken up, for a period of four successive weeks, and which notice shall contain a full description of all the marks and brands, if any there be, on such animal or animals so taken up, and that unless the owner or owners of such animal or animals make claim for the same within six weeks from the date of its first publication, said animal or animals will be castrated; the notice shall be signed by the person or persons having taken up the same. Said notice, keeping and caring for such animal or animals, shall be paid by the owner or owners of such, and until paid the person or persons taking up the same shall have a lien upon such animal or animals for his or their claims, and in case said owner or owners refusing or failing to pay for such notice, keeping and caring, within a reasonable time, the person or persons having such claims shall be entitled to recover the same by law; *Provided*, That if any person or persons shall castrate any stallion, and it shall, on proper evidence before any competent court, be proven to the satisfaction of said court that such animal was not of a class of stock prohibited from running at large by this section, said person shall be liable for damages to the amount of treble the value of said animal so castrated, and costs of suit; *Provided also*, That any person or persons who shall castrate any animal of the kind hereinbefore described, without giving notice in accordance with this section, shall, upon conviction be fined not less than one hundred dollars, nor more than five hundred dollars, and the costs of the prosecution, or imprisoned in the county jail for a period of not less than three months, nor more than one year, or both, in the discretion of the court; *Provided also*, That for the purposes of this section any stallion possessing one-quarter mustang blood, shall be deemed a mustang stallion. [S. L. 1884, ch. 89, § 1.]

Restrictions on bulls running at large in Albany County.

SEC. 4136. It shall be unlawful for any person or persons, owning or having charge of any bull or bulls to allow the same to run at large on any general stock range in that portion of Albany County known as the Laramie plains; also that portion of Albany County lying west of the Laramie plains, from the first day of February of each year to the first day of July inclusive. [S. L. 1877, p. 126, § 1.]

Penalty for violating last section.

SEC. 4137. Any person who shall fail to comply with the requirements of the preceding section shall on conviction, be punished for each offense by a fine not exceeding one hundred dollars, nor less than ten dollars. [S. L. 1877, p. 127, § 2.]

Bulls may be taken up as estrays.

SEC. 4138. Any resident ranchman or stock grower in said Albany County, may have the power to take up and post as estrays, any bull or bulls running at large in said county, during the time prohibited by the last two preceding sections, and he shall in all respects be required to comply with the law concerning estrays. [S. L. 1877, p. 127, § 3.]

Limitation upon last three sections.

SEC. 4139. The last three sections shall not be construed to apply to that portion of Albany County at or below the first canyon of Laramie river, or to any ranch on north side of said river at or near said canyon below Laramie City, nor that portion of Albany County lying north of the summit of the Black hills; *Provided*, That no owner of bulls shall be fined where place of residence or stock range may be outside of that certain portion of Carbon and Albany Counties wherein the running at large of bulls is restricted by the last three preceding sections. [S. L. 1877, p. 127, § 4.]

Stealing, embezzling, killing or unlawfully purchasing live stock.

SEC. 4140. Any person who shall steal, embezzle, or knowingly kill, sell, drive away, lead away, ride away, or in any manner, deprive another of the immediate possession of any neat cattle, horse, goat, sheep, mule, ass or swine; any person who shall steal, embezzle, or knowingly kill, sell, drive away, lead away, ride away, or in any manner apply to his own use any neat cattle, horse, goat, sheep, mule, ass or swine, the owner of which is unknown; any person who shall knowingly purchase or receive of any person not having the lawful right to sell or dispose of the same, any neat cattle, horse, goat, sheep, mule, ass or swine, shall be deemed guilty of a felony, and on conviction in a court of competent jurisdiction, shall be punished by imprisonment in the penitentiary not exceeding ten years, and fined not exceeding five thousand dollars. [C. L. 1876, ch. 105, p. 539, § 1. S. L. 1879, ch. 73, §§ 1 and 3.]

Description of neat cattle in indictment, etc.

SEC. 4141. In any indictment or complaint under this title, the description of any kind or class of neat cattle shall be deemed sufficient, if described as cattle, and for the purpose of this title the proof of brand shall be deemed sufficient to identify all classes of live stock mentioned in this title, and shall be *prima facie* evidence of ownership of such stock. [C.L. 1876, ch. 105, p. 540, § 7.]

Presumptions in criminal cases concerning neat cattle.

SEC. 4142. In the trial of all criminal cases concerning neat cattle, whatsoever the crime charged may be, the cattle thus involved in such charge, in the absence of proof to the contrary, shall be presumed at the time of the offense, to have been upon the range of the owner thereof, and if such range shall extend into more than one county, then the prosecutor shall elect in which of said counties to lay venue; and unless the evidence shall show affirmatively that the offense was not committed in either of said counties the act complained of shall be presumed to have been committed in the county where the crime is laid in the indictment presenting the crime. [S. L. 1884, ch. 87, § 5.]

Stock detectives--Compensation and rewards.

SEC. 4143. The county commissioners of any county, on the recommendation of the stock growers association of such county, may appoint one or more detectives, to discover and detect violations of the stock laws within said county; such detectives shall be paid such compensation as shall be directed by the county commissioners, from the county treasury. The county commissioners of the several counties may offer and pay rewards for the detection of those violating the stock laws of the territory; *Provided*, That this section shall not apply to the County of Sweetwater. [C. L. 1876, ch. 105, p. 543, § 13. S. L. 1877, p. 126, § 1.]

CHAPTER 4.

SHEEP.

SECTION.

4144. Appointment of sheep inspectors.
4145. Inspection of diseased sheep—Report.
4146. Persons bringing sheep into county to report same for inspection.
4147. Restrictions upon herding diseased sheep.
4148. Owner to grant facilities for inspection—Penalties.
4149. Bond and oath of inspector.
4150. Recording of oath and bond—Action on bond.

SECTION.

4151. Inspector to keep record.
4152. Compensation of inspector.
4153. Annual inspection and report of inspector.
4154. Petition for appointment of inspectors.
4155. Appointment of deputy inspectors.
4156. Inspector making false report—Penalty.
4157. Commissioners may remove inspector.
4158. Restrictions upon driving diseased sheep over land of another.
4159. Precautions against mixing sheep.

Appointment of sheep inspectors.

SEC. 4144. The county commissioners shall appoint a sheep inspector, who shall be a citizen of the county for which he is appointed, for each county containing two thousand sheep, who shall hold his office for two years, unless sooner removed; and any inspector may act in an adjoining county having no inspector, on request of the commissioners thereof. [S. L. 1879, ch. 66, § 1.]

Inspection of diseased sheep—Report.

SEC. 4145. It shall be the duty of the sheep inspector, whenever he has knowledge or information that any sheep within his jurisdiction have the scab or any other malignant contagious disease, to inspect said flock and report in writing the result of his inspection to the county clerk of his county, to be filed by him for reference for the county commissioners or any party concerned, and if so desired once in every two weeks thereafter to re-inspect said flock and report in writing the result and treatment, if any, in the same manner until said disease is reported cured; *Provided*, That in case of the removal of the flock six miles from the range of any other sheep as hereinafter provided, he shall only make one inspection every three months. [S. L. 1882, ch. 97, § 1.]

Person bringing sheep into county to report same for inspection.

SEC. 4146. Upon the arrival of any flock of sheep into this territory or into any county of this territory from any other county, state or territory, the owner or agent in charge shall immediately report them to the inspector of the county entered, for inspection, and the inspector shall inspect them and report as provided in the preceding section, and in case of failure from any cause of the owners or agents to report for inspection, a fine of not less than one hundred dollars nor more than three hundred dollars, shall be imposed on said owner or agent for each offense, by any court of competent jurisdiction, which fine, when collected, shall be paid into the general fund of the county treasury, and any judgment for such fine shall be a lien on such sheep; said fine to be collected by suit brought in the name of the territory. [S. L. 1884, ch. 84, § 1.]

Restrictions upon herding diseased sheep.

SEC. 4147. The owner or his agent of any flock reported by the inspector to be so diseased, shall immediately herd them so they cannot range upon or within one mile of any grounds accustomed to be ranged upon by any other sheep, and shall restrain them from passing over or traveling upon or within one mile of any public highway or road, and in case this cannot be done he shall immediately remove said sheep to a locality where they shall not be permitted to range within less than six miles of any other flock of sheep, and said sheep shall continue to be herded under the above restrictions until upon inspection they shall be reported free from such disease. [S. L. 1879, ch. 66, § 4.]

Owner to grant facilities for inspection—Penalties.

SEC. 4148. The owner or his agent or employes of any flock of sheep requiring inspection or about to be inspected, shall afford the inspector all reasonable facilities for making his inspection; and for every violation of any of the provisions of this chapter said owner or his agent or his employes shall be fined not less than ten dollars, nor more than three hundred dollars, and every separate days offense shall constitute a separate offense, and the written report of any offense, made by an inspector under oath, shall be *prima facie* evidence of the commission of said offense, and any justice of the peace of the county in which the offense is committed shall have jurisdiction thereof, and the inspector shall *ex-officio* report all violations of the provisions of this chapter of which he has knowledge. [S. L. 1879, ch. 66, § 5.]

Bond and oath of inspector.

SEC. 4149. Every inspector before entering upon the duties of his office shall take the oath of office prescribed by law, and shall give bond to the Territory of Wyoming in the sum of one thousand dollars, with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the county clerk, who shall endorse upon every bond he shall approve as follows: "I am acquainted with the sureties herein, and believe them to be worth the amount of the penal sum of the within bond, over and above their just debts and liabilities." [S. L. 1879, ch. 66, § 6.]

Recording of oath and bond—Action on bond.

SEC. 4150. Such bond, with the oath endorsed thereon, shall be recorded in the office of the register of deeds for the county in which the inspector shall reside, and may be sued on by any person injured on account of the unfaithful performance of said inspector's duties; *Provided*, That no suit shall be so instituted after more than twelve months have elapsed from the time the cause of action accrued. [S. L. 1879, ch. 66, § 7.]

Inspector to keep record.

SEC. 4151. Every inspector shall keep a fair and correct record of all his official acts, and if required, give a certified copy of any record, upon payment of the fees thereof, and in case of the inspector's death, resignation or removal, said record shall be deposited with the register of deeds. [S. L. 1879, ch. 66, § 8.]

Compensation of inspector.

SEC. 4152. The inspector shall receive for his services five dollars per day, whilst necessarily employed in inspecting, and for the first inspection an additional fee of one cent per sheep when the flock inspected is five hundred head or less, and for inspecting large flocks five dollars for the first five hundred, one-half cent per head for the second five hundred and one-quarter of one cent per head for the remainder of the flock, to be paid by the owner or his agent, and two cents per line of ten words for any official report or document; *Provided*, If any person shall keep several separate flock or flocks of sheep, and some flock or flocks be not infected with scab, the owner shall be required to pay only the fees for inspection of such infected flock or flocks; *And provided further*, That when an inspection is made and the result shall show no disease the inspector shall give the owner a written statement to that effect, and shall be paid for such inspection out of the county treasury at the rate established by this section, as before named after his account for said inspection shall have been allowed by the county commissioners, in the same manner and form as claims against the county are allowed and approved by them. The inspector shall receive ten per cent. of all fines and penalties collected in cases in which he gives information of the offense, and his interest in the result shall not effect his competency as a witness, and all fines and penalties except as herein provided shall be paid into the general fund of the county. [S. L. 1882, ch. 97, § 3.]

Annual inspection and report of inspector.

SEC. 4153. It shall be the further duty of the inspector between the tenth day of August and the tenth day of December in each year, to visit each flock of sheep within his county, and make a written report of their condition, as to scab or other malignant contagious diseases, and when he reports such disease he shall be paid for the same by the owner or agents, and when he reports no disease he shall be paid by the county as provided in the last preceding section. [S. L. 1882, ch. 97, § 4.]

Petition for appointment of inspectors.

SEC. 4154. No sheep inspector shall be appointed by the county commissioners of any counties of this territory until they have been petitioned to make such appointment by the majority of the sheep owners of said counties respectively. [S. L. 1879, ch. 66, § 11.]

Appointment of deputy inspectors.

SEC. 4155. The inspector shall be allowed to appoint deputy inspectors, when his duties are such as to require his presence in distant portions of the county at the same time. Such appointment to be approved by the chairman of the board of county commissioners, when so appointed and approved the official acts of such deputies as such shall have full force and the inspector and his bondmen shall be held responsible therefor. [S. L. 1882, ch. 97, § 5.]

Inspector making false report—Penalty.

SEC. 4156. Whenever a sheep inspector shall wilfully and falsely report any sheep subject to disease, he shall be subjected to a fine of ten times the amount of fees charged by him for inspection, and if he shall wilfully and falsely report any sheep inspected by him free from disease, that are thus infected he shall be subjected to a penalty not exceeding three hundred dollars for each offense. [S. L. 1882, ch. 97, § 6.]

Commissioners may remove inspector.

SEC. 4157. If any sheep inspector shall be found guilty of either of the offenses set forth in the preceding section, or on any complaint in writing by any three wool growers of the county, the county commissioners after allowing the inspector a fair hearing, if they shall be of the opinion that he is incompetent to discharge intelligently and efficiently the duties of his office, or that having sufficient knowledge or information he has for any cause wilfully or negligently failed to make the required inspection, or that he has needlessly made inspections for the purpose of securing fees, or that his reports have been influenced by favor or prejudice or from any cause he has failed in the proper discharge of the duties of his office, it shall be the duty of the said commissioner to declare said inspector's office vacant and to make a new appointment. [S. L. 1882, ch. 97, § 7.]

Restrictions on driving diseased sheep over land of another.

SEC. 4158. Every owner of sheep having scab or other malignant diseases, shall have the right to drive over the intermediate ranges to his own dipping works or to any public or private dipping works, but in so doing he shall consult the owners or occupants of said ranges twenty-four hours before reaching the nearest limit of the same, as to where he shall cross the same, and in no case shall he enter another's corral, or water at his troughs or accustomed watering places, with his diseased sheep, without the written or otherwise expressed consent of the owner, and he shall take every possible precaution to avoid mixing his diseased sheep with any other flock or flocks. For each and every violation of the provisions of this section he shall be subjected to a penalty of not less than two hundred nor more than five hundred dollars; and shall be held liable for damages in case any other flock of sheep contract disease through his carelessness or failure to comply with this law. [S. L. 1882, ch. 97, § 8.]

Precautions against mixing sheep.

Sec. 4159. Every person driving a flock of sheep from one range to another or through any portion of this territory, shall use every precaution to avoid mixing his sheep with those belonging on the range through which he may be driving, or with sheep being driven by other persons, and a wilful or careless neglect of the provisions of this section shall subject the party so offending to civil suit for damages by the person with whose sheep his sheep may become mixed, and to a fine of not less than one hundred nor more than five hundred dollars; *Provided*, That this section be not so construed as to prevent the proper herding of sheep on their accustomed ranges. [S. L. 1882, ch. 97, § 9.]

CHAPTER 5.

SWINE AND GOATS.

SECTION.
4160. Swine not to run at large.
4161. Violating last section—Penalty.
4162. Notice to owner when swine found at large.
4163. Sale of impounded swine—Notice.

SECTION.
4164. Swine and goats not to run at large in towns, etc.
4165. Sale of impounded goats, etc.—Notice.
4166. Bill of sale to be given.

Swine not to run at large.

Sec. 4160. It shall be unlawful for any owners of swine to allow the same to run at large within the Territory of Wyoming. [S. L. 1877, p. 127, § 1.]

Violating last section—Penalty.

Sec. 4161. Any person violating the preceding section, after forty-eight hours written notice by a proper officer, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not exceeding ten dollars, for each offense, in the discretion of the court. [S. L. 1877, p. 127, § 2.]

Notice to owner when swine found at large.

Sec. 4162. It shall be the duty of every sheriff, deputy sheriff, constable, marshal or policeman, in this territory, upon ascertaining by his own knowledge or by notice, verbally or otherwise given, that any swine is or are so running at large, to immediately give said written notice to the owner or owners of said swine or to the agent or manager of the business of said owner or owners and if the owner or owners of said swine are to said officer unknown, said officer may impound said swine until claimed by the owner thereof and may charge a fee of twenty-five cents per day for the keeping of each and every swine, and ten cents each for impounding, but such impounding shall not exonerate from the said penalty. [S. L. 1879, ch. 77, § 1.]

Sale of impounded swine—Notice.

Sec. 4163. If said hog or hogs are not claimed within ten days, the impounding officer shall post at least three notices, in conspicuous places within the settlement where they are impounded, that said hog or hogs will be sold to the highest bidder at public vendue, and they shall be sold at such time, and the proceeds of the sale, after deducting lawful expenses, shall be paid into the public school fund. [S. L. 1879, ch. 77, § 2.]

Swine and goats not to run at large in towns, etc.

SEC. 4164. It shall be unlawful for any owner or owners of swine or goats to allow the same to run at large within the limits of any city, town or village within the Territory of Wyoming. And it shall be the duty of every sheriff, deputy sheriff, constable, marshal or policeman in said territory, upon that any swine or goats are so running at large, to immediately give written notice ascertaining by his own knowledge, or by notice verbally or otherwise given, to the owner or owners of said swine or goats, or to the agent or manager of the business of the owner or owners; or if the owner or owners of said swine or goats are to the said officers unknown, then in either case said officers shall impound said swine or goats until claimed by the owner thereof, and may charge a fee of twenty-five cents per day for the keeping of each and every swine or goat, and ten cents each for impounding; but such impounding shall not exonerate from the said penalty. [S. L. 1884, ch. 92, § 1.]

Sale of impounded goats, etc.—Notice.

SEC. 4165. If said swine or goats are not claimed within seven days, the impounding officer shall post at least three notices in conspicuous places within the city, town or village where they are impounded, stating that said swine or goats will be sold to the highest bidder at public sale, such notices to specify a day of sale not less than three days later than the day of posting such notices, and the said swine or goats shall be sold at such time, and the proceeds of such sale, after deducting lawful expenses, shall be paid into the public school fund; *Provided*, That the owner may at such sale claim and receive such net proceeds of sale, or that he may at an earlier date prove property and receive the same on paying the accrued charges according to the terms of this and the preceding section. [S. L. 1884, ch. 92, § 2.]

Bill of sale to be given.

SEC. 4166. The impounding officer shall make the sale provided in the preceding section, and shall furnish the purchaser a bill of sale for such animal or animals sold, which bill of sale shall constitute valid title to the same. [S. L. 1884, ch. 92, § 3.]

CHAPTER 6.

WIND RIVER VALLEY STOCK GROWERS' ASSOCIATION.

SECTION.
4167. Of whom association shall consist.
4168. To be body corporate.
SECTION.
4169. Boundaries of stock range.

Of whom association shall consist.

SEC. 4167. The Wind River Valley Stock Growers' Association shall consist of four members representing the association; one president, whose duty it will be to preside at all meetings of said association; one secretary, who shall record all matter of importance, and two captains of the two several sub-districts, whose duty it will be to give notice of all rodairs or round-ups thirty days prior to the time of the semi-annual rodairs, and who shall have control of and superintend the same. [S. L. 1877, p. 128, § 1.]

To be corporate.

SEC. 4168. The same shall be a body corporate and have full power to sue and be sued and transact the general business of the association. [S. L. 1877, p. 128, § 2.]

As to validity of this enactment, see § 1889, U. S. Rev. Stat.

Boundaries of stock range.

SEC. 4169. The boundary or range of said association shall be as follows: Beginning at the crossing of the northwestern stage road on Sweetwater, thence running east to the nine-mile crossing of same stream fifty miles, thence north to the junction of Big Papoagie and Little Wind river, thence up Big Papoagie to the mouth of north fork of same, thence up the north fork to crest of Rocky mountains, thence south to place of beginning. [S. L. 1877, p. 128, § 3.]

CHAPTER 7.

ESTRAYS.

SECTION.
4170. When and by whom estrays taken up.
4171. Description of estray to be recorded and advertised.
4172. How estrays re-claimed before sale.
4173. Arbitration of dispute concerning expense.
4174. Appraisement—Notice and sale—Disposition of proceeds.
SECTION.
4175. Place of sale.
4176. Disposition of money.
4177. Matters to be considered on appraisement.
4178. Fees of appraisers and justice.
4179. By whom costs paid.
4180. Estray stallions and jacks.
4181. Liability for death of estray.

When and by whom estrays taken up.

SEC. 4170. It shall be lawful for any person occupying and possessing land in this territory, and being in possession thereof, to take up any estray horse, mule or ass, neat cattle, sheep or swine, found within his inclosed premises at any season of the year, and any estray found around his premises between the first of December and the first of March, may be taken up by such person, and any horse, mule or ass, with any portion of harness attached to it, and any oxen with yoke, that are believed to have strayed away from their owners, may be taken up by any person at any time. [C. L. 1876, ch. 46, § 1.]

Description of estray to be recorded and advertised.

SEC. 4171. It shall be the duty of any person taking up an estray, to send a description of the same to the county clerk, within fifteen days after taking it up, and the county clerk shall immediately record the same, in a book kept for that purpose, for which he shall receive the sum of one dollar. The person taking up the estray shall, within twenty days thereafter, procure the publication of the description of such animal in any paper published in the county, for at least two consecutive weeks. [C. L. 1876, ch. 46, § 2.]

How estray re-claimed before sale.

SEC. 4172. The owner of an estray may, at any time previous to its sale, re-claim the same on proving said property by oath or otherwise, and paying for the advertisement, and a reasonable compensation for any other necessary expense incurred by the person taking up said estray. [C. L. 1876, ch. 46, § 3.]

Arbitration of dispute concerning expense.

SEC. 4173. In case the parties cannot agree upon the amount of expenses incurred, they may each choose a disinterested person, to act as arbitrators, and the two chosen may choose a third; the decision of the arbitrators shall be final. [C. L. 1876, ch. 46, § 4.]

Appraisement—Notice and sale—Disposition of proceeds.

SEC. 4174. When an estray, if it be a sheep, hog or calf, under the age of one year, has not been reclaimed within six months after advertising the same, it shall become the property of the person taking it up without further proceedings. If the estray be a horse, mule, ass or bull, cow or steer, over the age of one year, it must be reclaimed within six months from the time it was first advertised. If any estray shall not be reclaimed within the time specified, the person taking up the estray shall notify a justice of the peace of the county, who shall appoint two disinterested persons, and administer to them an oath or affirmation, to faithfully and truly appraise said estray, and said appraisers shall make due return thereof, in writing, to said justice of the peace, who shall appoint a day of sale, and cause notice of the time and place of sale to be published at least two weeks consecutively, before the day of sale, in a newspaper printed in the county, and in case there is no newspaper printed in said county, there shall be written or printed notices posted up at the county seat, and such other places as said justice of the peace shall order, and on the day of sale appointed, said estray shall be sold by such justice to the highest bidder, in cash, and the proceeds thereof, after deducting the costs of the proceedings, and the expense of keeping said estray, shall be paid to the co unty treasurer within five days after the sale, subject to the order of the owner, provided the owner of the said estray shall establish his ownership to the same, to the satisfaction of the county treasurer of said county, within one year from the day of sale, and if said balance is not so claimed within the time so specified, it shall be placed by the said treasurer to the credit of the general school funds of said county. [C. L. 1876, ch. 46, § 5.]

Place of sale.

SEC. 4175. The place of sale shall be at the office of the justice before whom the estray is posted. [C. L. 1876, ch. 46, § 6.]

Disposition of money.

SEC. 4176. The money received from the sale of an estray shall go into the county school fund, all expenses first being paid. [C. L. 1876, ch. 46, § 7.]

Matters to be considered on appraisement.

SEC. 4177. The appraisers of estrays shall estimate the value of the necessary labor, trouble and expense of the person in taking up and keeping an estray, taking into consideration the services rendered by the animal. [C. L. 1876, ch. 46, § 8.]

Fees of appraisers and justice.

SEC. 4178. The appraisers of estrays shall receive fifty cents each for each appraisement, but when more than one animal is taken up at any one time, by one person, they shall all be appraised as one, and the appraisers shall be entitled to compensation for but one appraisement. The justice of the peace shall receive for his services the sum of three dollars. [C. L. 1876, ch. 46, § 9.]

By whom costs paid.

SEC. 4179. The costs of advertising, appraising, and the services of the justice of the peace, shall be paid by the person taking up the estray, and he shall receive the same, with fifty per cent. additional, from the proceeds of the sale of the estray. [C. L. 1876, ch. 46, § 10.]

Estray stallions and jacks.

SEC. 4180. If any horse or ass not gelded, two years old or upwards, shall be found running at large, it shall be lawful for any person to take up such horse or ass, and forthwith give notice to the owner or keeper, if he be known to the taker-up, and if the owner or keeper do not appear within six days thereafter, and pay to the said taker-up, five dollars, as compensation for his trouble, the taker-up shall proceed to advertise said horse or ass, and the same proceedings shall be had in every respect as hereinbefore provided in the case of estray horses and mules; *Provided*, That the taker-up may, after the expiration of thirty days from the time of advertising, geld or procure to be gelded, the said horse or ass, which shall be done at the risk and expense of the owner, except when such horse or ass is in the owner's herd, or in care of the owner's herder. [C. L. 1876, ch. 46, § 11.]

Liability for death of estray.

SEC. 4181. Should any animal, taken up as an estray, die while in the possession of the person taking it up, he shall not be liable for the loss, unless its death was the result of mistreatment or wilful neglect. [C. L. 1876, ch. 46, § 12.]

CHAPTER 8.

FENCES.

SECTION.
4182. Lawful fence in certain counties.
4183. Lawful fence in other counties.
4184. Maintenance of partition fence.
4185. Liability for damage by breachy animals—Arbitration.
4186. Who deemed owner of inclosure.
4187. Notice to owner when damage done.
4188. Retention of animals to secure payment.
4189. Proof and judgment for damages.
4190. Proceedings when defendant is unknown.
4191. Certain other fences deemed lawful.
4192. Other lawful fences.
4193. Penalty for destroying fences, etc.
4194. Liability for damages by unlawful wire fences.

Lawful fence in certain counties.

Sec. 4182. A fence constructed in either of the two following ways shall be a lawful fence, in the counties of Albany, Carbon, Uinta and Sweetwater:

First—By placing the ends of ordinary fence posts firmly in the ground at least twenty inches deep, and not more than twelve feet distant from each other, and by firmly fastening thereto good, sound rails, or poles, of sufficient size, five to the panel, the top rail or pole to be at least five feet from the surface of the ground, and the bottom rail or pole not more than ten inches from the ground;

Second—By placing posts, as provided in the first sub-division of this section, but not more than eight feet apart, and nailing, or firmly fastening thereto, ordinary, sound, fencing boards, five boards to the panel, and position of top and bottom boards as provided for rails or poles in first sub-division of this section. [C. L. 1876, ch. 51, p. 349, § 1; p. 351, §§ 1 and 4.]

Lawful fence in other counties.

Sec. 4183. A fence constructed in either of the two following ways shall be a lawful fence in all the counties of the territory, except Albany, Carbon and Uinta:

First—By placing the ends of ordinary fence posts firmly in the ground at least twenty inches deep, and not more than twelve feet distant from each other, and by firmly fastening thereto good, sound rails, or poles, of sufficient size, two to the panel, the top rail or pole to be not less than four feet from the surface of the ground, and the bottom rail or pole not more than twenty inches from the ground, with one wire not less than the size of telegraph wire, firmly stretched and secured to each post so as to equally divide the space between the rails or poles above provided for; *Provided*, That a third rail or pole may be substituted in place of the wire;

Second—By placing posts as provided in the first sub-division of this section, but not more than eight feet apart, and nailing or fastening thereto, ordinary, sound, fencing boards, two boards and one wire, the same as provided in said sub-division, to the panel, said boards and wire to be fastened to each post in the same position as provided for rails, or poles, and the wire in the said sub-division; *Provided*, That a third board may be substituted in the place of the wire. [C. L. 1876, ch. 51, p. 351, §§ 1, 2, 3 and 4.]

Maintenance of partition fence.

Sec. 4184. If two or more persons join in the construction of a partition fence, each party shall thereafter keep in good repair his portion of such fence and neither party shall abandon his part of such partition fence, or remove the same or any portion thereof, until after one year's notice to the other party or parties interested therein, of his intention so to do, unless by the consent of all parties interested therein. [C. L. 1876, ch. 51, p. 349, § 2.]

Liability for damage by breachy animals—Arbitration.

Sec. 4185. Any person or persons owning or having in his or her or their possession or charge any horses, mules, cattle or any one of such animals which shall breach over or under or breach into any lawful inclosure belonging to any person or persons other than the owners of such animal or animals, such person or persons, owning or having in charge or possession such breaching animal or animals, shall be liable to the party or parties sustaining such injury for all damages he, she or they may have sustained by reason of such breaching as aforesaid, to be recovered in a civil action before any court having jurisdiction thereof, or by arbitration, each party to select a property holder, and the two arbitrators to select a third, and said arbitrators, before entering upon their duties, shall be first sworn before a justice of the peace, and it shall be the duty of the arbitrators to carefully examine the fence, its condition, and assess the damage done; the arbitrators shall examine witnesses under oath, one of them to administer said oath to the witness; they shall make a written report, signed by at least two of the arbitrators, to any justice of the peace in the county in which such damage is sustained. The finding of the arbitration, as provided for in this section, shall, within three days after the same shall have been rendered, be filed with any justice of the peace in the county where said trespass shall have been committed, who shall enter the cost upon his docket and proceed to issue execution therein as in other cases originally commenced before him. [C. L. 1876, ch. 51, p. 349, § 3.]

Who deemed owner of inclosure.

SEC. 4186. Any person or persons occupying or having the charge of an inclosure shall be considered the owner thereof in any action under the provisions of the last section. [C. L. 1876, ch. 51, p. 350, § 4.]

Notice to owner when damage done.

SEC. 4187. The party sustaining the damage shall notify the owner or person having in charge such offending animals, of such damage, and the probable amount thereof; *Provided*, He knows to whom such animal or animals belong, and that such owner or keeper resides within the county where the damage was committed. [C. L. 1876, ch. 51, p. 350, § 5.]

Retention of animals to secure payment.

SEC. 4188. The person suffering such damage done by animals as mentioned in section forty-one hundred and eighty-five, may restrain and keep in custody as many of such offending animals as are equal in value to the damage done, until the finding of the court or arbitration be ascertained, unless, before such suit, the amount of his claim or expense of keeping such animals be tendered him. [C. L. 1876, ch. 51, p. 350, § 6.]

Proof and judgment for damages.

SEC. 4189. If, upon the trial of any action under the provisions of section forty-one hundred and eighty-five, it shall appear by competent testimony, that the plaintiff's enclosure is a lawful fence under the provisions of this chapter, he shall be allowed to prove the amount of damage sustained; and (if he has retained in custody the animals committing such damage) the amount of the expense incurred for keeping such animals, and any judgment rendered for damages, costs and expenses against the defendant, shall be a lien upon the animals committing the damage. But if it shall appear upon the trial that the plaintiff's enclosure is not a lawful fence, or that no damage was sustained, judgment shall be rendered against the plaintiff, for costs of suit and damages sustained by defendent. [C. L. 1876, ch. 51, p. 350, § 7.]

Proceedings wnen defendant is unknown.

SEC. 4190. If, upon the trial, it appears that the defendant is not the owner, or the person in charge of such offending animals, he shall be discharged from the action with his costs, and the suit may proceed against a defendant whose name is unknown; and if, at the commencement of the action, the plaintiff does not know the name of the owner, or keeper of such offending animals, he may bring suit against a defendant unknown, in which case service shall be made by posting copies of the summons in three of the most public places within the county, not less than ten days previous to the day of trial, which posting may be done by the proper officer, or by any voter of the county. [C. L. 1876, ch. 51, p. 350, § 8.]

Certain other fences deemed lawful.

Sec. 4191. The fence known as a "worm fence," or a stone wall, or any fence constructed of any material shall be a lawful fence, provided such worm fence, wall, or other fence, shall be as effective for resisting breaching stock as the fences made in the manner prescribed by section forty-one hundred and eighty-two. [C. L. 1876, ch. 51, p. 350, § 9.]

Other lawful fences.

Sec. 4192. The following shall be a lawful fence in the Territory of Wyoming: A fence made of tubular wrought iron fence posts, or wooden posts, and three span of barbed wire, or two span of barbed wire and one span of plain wire, or four span of plain wire, said posts used to be tubular wrought iron fence posts, with a cast iron base to be twenty-two inches in length, or wooden posts four inches in diameter, either of said posts so used to be placed at no greater distance apart than eighty feet, with iron or wooden stays not more than sixteen and one-half feet apart. A post and board fence made of sound posts not less than four inches in diameter, set substantially in the ground not more than ten feet apart, with three boards of one inch lumber eight inches wide and not more than ten inches apart, or four boards one inch thick and six inches wide, not more than eight inches apart, securely fastened with nails or otherwise. A three pole fence with round poles not less than two inches in diameter at the small end, with either upright or leaning posts, not more than twenty-one feet apart securely fastened with nails, wires or otherwise. *Provided*, That all other fences made and constructed of boards, rails, poles, wires, stones or hedge plants, or other material which upon evidence shall be declared as strong and as well calculated to protect enclosures as those first described, shall be considered a lawful fence. Such plain wire as before described shall not be less than number eight wire. And all wires shall be kept properly stretched. *And it is further provided*, That none of the above described fences shall be considered lawful if less than four feet in height. [S. L. 1882, ch. 46, § 1.]

Penalty for destroying fences, etc.

Sec. 4193. Any person who shall wilfully or negligently leave open, break down or destroy any bars or gate, made and provided for the use and convenience of the public, or shall wilfully tear down, throw down or destroy in any manner any lawful fence, shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than one hundred dollars, or by confinement in the county jail not more than three months, or by both fine and imprisonment in the discretion of the court. [S. L. 1882, ch. 46, § 2.]

Liability for damages by unlawful wire fence.

Sec. 4194. Any person or persons who shall construct any barbed wire fence contrary to the provisions of section forty-one hundred and ninety-two shall be liable for all damages to animals that may occur from the non-compliance with the above section, such damages to be collected in the same manner as damages from other causes as provided by law. [S. L. 1882, ch. 46, § 3.]

CHAPTER 9.

INDEMNITY FOR STOCK KILLED BY RAILWAYS.

SECTION.
4195. Liability for injury to stock.
4196. Company to notify owner of injury to stock.
SECTION.
4197. Owner to make sworn statement of value—Payment by company.
4198. Term "live stock" defined.

Liability for injury to stock.

SEC 4195. Any corporation operating a railway, or railroad, within this territory, which shall injure or kill any live stock, by running any engine or engines, car or cars, over or against any such live stock, shall be liable to the owner or owners of such live stock, for the damage sustained by such owner or owners, by reason of such injuring or killing of such live stock. [C. L. 1876, ch. 105, § 544, § 1.]

Company to notify owner of injury to stock.

SEC. 4196. Any such corporation injuring or killing any live stock, by running any engine or engines, car or cars, over or against any such live stock, shall, within ten days thereafter, notify the owner or owners of such live stock, so killed or injured, of the fact; *Provided*, That if the ownership of such stock so killed or injured, is unknown, such corporation shall file in the office of the recorder of the county in which such live stock was so killed or injured, a full description, including the number, classes and brands, of such live stock, naming the locality, where such stock was so killed or injured. And any corporation failing to comply with the requirements of this section, shall be liable to the owner or owners of such live stock, so killed or injured, in double the amount of the damages sustained by the owner or owners of such stock, by reason of the said killing or injuring. [C. L. 1876, ch. 105, p. 544, § 2.]

Owner to make sworn statement of value—Payment by company.

SEC. 4197. Any person or persons owning any live stock which shall be killed or injured, in the manner set forth in section forty-one hundred and ninety-five, within six months after the said person or persons is, or are, notified of the said killing or injuring, as provided in the last preceding section, shall furnish the corporation having so killed or injured live stock, through its nearest agent, sworn evidence of the value of said live stock, and upon the payment by said corporation, to the owner or owners of said live stock, of two-thirds of the value of said stock, so ascertained, the said corporation shall be released from all liability under this chapter. [C. L. 1876, ch. 105, p. 544, § 3.]

Term "live stock" defined.

SEC. 4198. That for the purposes of this chapter the terms "live stock" and "stock," shall include all classes of horses, asses, mules, neat cattle, sheep and swine. [C. L. 1876, ch. 105, p. 544, § 4.]

CHAPTER 10.

VETERINARIAN—CONDEMNATION OF DISEASED STOCK.

SECTION.
4199. Appointment of veterinarian—Oath—Qualifications—Term of office.
4200. Duties of veterinarian.
4201. Authority to quarantine.
4202. Diseased animals to be slaughtered.
4203. Appraisement—Burning of carcass.
4204. Annual report of veterinarian.
4205. Importation of stock may be restricted.
4206. Notice of disease to veterinarian—Penalty for concealment.
4207. Regulations in case of disease—Animals in transit.
SECTION.
4208. Claims against territory—Procedure—Restrictions.
4209. Compensation of arbitrators.
4210. Claims rejected by veterinarian to be arbitrated.
4211. Compensation of veterinarian and others—Deputy—Contingent fund—Bond of veterinarian.
4212. Liability of territory limited to appropriation.
4213. Special tax to pay indemnity.

Appointment of veterinarian—Oath—Qualifications—Term of office.

SEC. 4199. The governor of the territory is hereby authorized to nominate, which nomination may be made upon the recommendation of the Stock

Growers association of the territory, and by and with the advice and consent of the council appoint a competent veterinary surgeon, who shall be known as the territorial veterinarian, and on entering on his duties shall take an oath to well and truly perform his duties as provided by law. No person shall be competent under this chapter to receive the appointment of territorial veterinarian, who is not at the date of his appointment a graduate in good standing of a recognized college of veterinary surgery, either in the United States, Canada, or Europe. He shall hold his office for two years; he may be removed for cause by the governor, who shall also have power to fill a vacancy. [S. L. 1882, ch. 41, §§ 1 and 11.]

Duties of veterinarian.

SEC. 4200. The duties of said veterinarian shall be as follows: To investigate any and all cases of contagious or infectious disease among domestic animals in this territory, of which he may have knowedge, or which may be brought to his notice by any resident in the locality where such disease exists. And it shall also be his duty in the absence of specific information to make visits of inspection to any locality where he may have reason to suspect that there is contagious or infectious disease. And to inspect under the regulations of this chapter all domestic animals that may arrive at any railroad station in this territory, when these animals are such as to warrant the presumption that they are intended to remain in the territory, and are to be or may be used for breeding purposes therein. And it shall be the duty of the owner, or in his absence, of the person in charge of such animals so arriving, to notify the territorial veterinarian without delay, and not to allow such animals or any of them to leave the place of arrival, until they shall have been examined by the veterinarian and his certificate obtained that all are free from disease. And no animal pronounced unsound by the veterinariain shall be turned loose, removed or permitted to escape, but shall be held subject to the order of the veterinarian. Any person failing to comply with this provision shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than five hundred dollars for each offense. [S. L. 1882, ch. 41, § 2.]

Authority to quarantine.

SEC. 4201. In all cases of contagious or infectious disease among domestic animals in this territory the veterinarian shall have authority to order the quarantine of the infected premises, and in case such disease shall become epidemic in any locality in this territory the veterinarian shall immediately notify the governor of the territory, who shall thereupon issue his proclamation, forbidding any animal of the kind among which said epidemic exists, to be transferred from said locality without a certificate from the veterinarian, showing such animal to be healthy. [S. L. 1882, ch. 41, § 3.]

Diseased animals to be slaughtered.

SEC. 4202. In any case of epidemic disease where premises have been previously quarantined by the territorial veterinarian, as before provided, he is further authorized and empowered, when in his judgment necessary, to order the slaughter of any or all diseased animals upon said premises, and of all animals that have been exposed to contagion or infection under the following restrictions. Said order shall be a written one and shall be made in duplicate, and there shall be a distinct order and duplicate for each owner of the animals condemned, the original of each order to be filed by the veterinarian with the governor, and the duplicate given to said owner. And, further, before slaughtering any animal, or animal that has been exposed only and does not show disease the veterinarian shall call in consultation with him two respectable practicing veterinarians or physicians, residents of the territory, or if this be impossible, then two reputable and well known stock owners, residents of the territory, and shall have the written endorsement upon his order of at least one of said consulting physicians or stock owner stating that such action is necessary, and the consent of the owner or person in charge, before such animal or animals shall be slaughtered. [S. L. 1882, ch. 41, § 4.]

Appraisement—Burning of carcass.

SEC. 4203. Whenever, as herein provided, the territorial veterinarian shall order the slaughter of one or more animals, he shall at the time of making such order notify in writing the nearest justice of the peace, who shall thereupon summon three disinterested citizens (who shall be stock owners) of the neighborhood to act as appraisers of the value of such animals. Said appraisers, before entering upon the discharge of their duties, shall be sworn to make a true and faithful appraisement without prejudice or favor. They shall after making their appraisement return certified copies of their valuation, a separate one being made for each owner, together with an accurate description of each animal slaughtered (giving all brands, earmarks, wattles, age, sex and class, as to whether American, half-breed or Texas) to the justice of the peace by whom they were summoned, who shall, after entering the same upon his record and making an indorsement upon each, showing it to have been properly recorded, return it together with the duplicate order of the veterinarian to the person or persons owning the animals slaughtered, and it shall be the duty of the territorial veterinarian to superintend the slaughter of such animals as may be condemned, and also the destruction of the carcass, which latter shall be by burning to ashes, and shall include every part of the animal and hide, and also excrement as far as possible. He shall cause the said slaughter and burning to be done as cheaply as practicable, and shall pay the expense from the contingent fund hereinafter provided, taking proper vouchers for the same. [S. L. 1882, ch. 41, § 5.]

Annual report of veterinarian.

SEC. 4204. The territorial veterinarian shall make a report at the end of every year to the governor of all matters connected with his work, and the governor shall transmit to the several boards of county commissioners such parts of said report as may be of general interest to the breeders of live stock. The governor shall also give information in writing as rapidly as he obtains it to the various boards of county commissioners, of each cause of suspicion or first eruption of disease in each locality, its course and the measures adopted to check it. [S. L. 1882, ch. 41, § 6.]

Importation of stock may be restricted.

SEC. 4205. Whenever the governor of the territory shall have good reason to believe that any disease covered by this chapter has become epidemic in certain localities in another state or territory or that conditions exist which render domestic animals liable to convey disease, he shall thereupon by proclamation schedule such localities and prohibit the importation from them of any live stock of the kind diseased into this territory except under such restrictions as he may deem proper. Any corporation or any person or persons who, after the publishing of such proclamation, shall knowingly receive in charge any such animal or animals from any one of said prohibited districts and transport or convey the same within the limits of this territory shall be deemed guilty of a misdemeanor, and upon conviction fined not less than one thousand dollars nor more than ten thousand dollars for each and every offense, and shall further become liable for any and all damages and loss that may be sustained by any person or persons by reason of the importation or transportation of such prohibited animals. [S. L. 1882, ch. 41, § 7.]

Notice of disease to veterinarian—Penalty for concealment.

SEC. 4206. It shall be the duty of any person or persons who shall have or suspect that there is upon his or their premises any case of contagious or infectious disease among domestic animals, to immediately report the same to the territorial veterinarian, and a failure so to do, or any attempt to conceal the existence of such disease, or to wilfully or maliciously obstruct or resist the said veterinarian in the discharge of his duty as hereinbefore set forth, shall be deemed a misdemeanor, and any person or persons who shall be convicted of any one of the above acts or omissions shall be fined not less than fifty dollars nor more than five hundred dollars for each and every offense, shall forfeit all claims to indemnity for loss from the territory, and upon conviction a second time shall in addition to the above named fine be imprisoned for a term not less than thirty days nor more than six months. [S. L. 1882, ch. 41, § 8.]

Regulations in case of disease—Animals in transit.

SEC. 4207. The following regulations shall be observed in all cases of disease covered by this chapter: *First*, It shall be unlawful to sell, give away or in any manner part with any animal affected with or suspected of contagious or infectious disease; and in the case of any animal that may be known to have been affected with, or exposed to any such disease within one year prior to such disposal, due notice of the fact shall be given in writing to the party receiving the animal. *Second*, It shall be unlawful to kill for butcher purposes, any such animal, to sell, give away or use any part of it, or its milk, or to remove any part of the skin. A failure to observe these provisious shall be deemed a misdemeanor and on conviction shall be punished by a fine not less than one hundred dollars nor exceeding five hundred dollars. It shall be the duty of the owner or person having in charge any animal affected with, or suspected of any contagious or infectious disease to immediately confine the same in a safe place, isolated from other animals, and with all necessary restrictions to prevent dissemination of the disease until the arrival of the territorial veterinarian.

The above regulations shall apply as well to animals in transit through the territory, as to those resident therein, and the territorial veterinarian or his duly authorized agent shall have full authority to examine, whether in car, or yards, or stables, all animals passing through the territory or any part of it, and on detection or suspicion of disease, to take possession of and treat and dispose of said animals in the same manner as is prescribed for animals resident in the territory. [S. L. 1882, ch. 41, § 9.]

Claims against territory—Procedure—Restrictions.

SEC. 4208. All claims against the territory arising from the slaughter of animals under the provisions of this chapter shall together with the order of the veterinarian and the valuation of the appraisers in each case be submitted to the territorial auditor, who shall examine them without unnecessary delay, and for each one that he finds to be equitable and entitled to indemnity under this chapter, shall issue his warrant on the territorial treasurer for the sum named in the appraiser's report. All claims for indemnity arising under the provisions of this chapter, shall, before they are presented for payment to the auditor, be submitted to the territorial veterinarian, who shall fully inform himself of the facts connected with each claim; if he shall be of the opinion that the claim is legal and just, he shall approve the same in writing endorsed thereon; if he shall be of the contrary opinion, he shall reject it in like manner, and in all cases he shall express in such endorsement the reasons for his approval or rejection, as the case may be. If the territorial veterinarian shall reject a claim, it shall then, together with the endorsement of the veterinarian, setting forth his reasons for such rejection, be submitted for determination to a board of arbitration, to consist of three members, which shall be formed as follows: The territorial veterinarian shall select as one member of said board one stock grower, who shall be a resident of the county wherein the slaughtered animals for which the claim is made, ranged. The claimant shall select as another member of said board, another stock grower, who shall be a resident of the same county, and these two so selected shall choose the third member of the board from among the stock growers of the same county. The arbitrators shall have power to appoint a time and place for hearing; to adjourn from time to time; to administer oaths to witnesses; to hear the allegations and evidence of the parties, and to make an award thereon. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall each be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the claim in controversy; and to make a just finding according to their understanding and according to the provisions of this chapter. The award of the arbitrators shall simply be to the effect that they find the claim legal and just according to the provisions of this chapter; or the reverse, as the case may be. The award shall be in writing, signed by the arbitrators, or a majority of them, and shall be forwarded by them with all the papers submitted to them, to the territorial auditor. If the board of arbitrators shall concur with the territorial veterinarian in rejecting the claim, their decision shall be final. If the board of arbitrators shall find that the claim is legal and just, then the said claim shall in all respects be held as though the territorial veterinarian had in the first place approved the same.

In auditing any claim under this chapter, it shall be the duty of the auditor to satisfy himself that it does not come under any class for which indemnity is refused by this chapter, and he shall require the affidavit of the claimant to this fact, or if the claimant be not cognizant thereof then of some reputable person who is cognizant thereof, and the auditor may at his discretion require further proof. The indemnity to be granted shall be two-thirds of the ordinary value of the animal as determined by the appraisers, without reference to its diminished value because of being diseased. It shall be paid to the owner upon his application and the presentation of the proofs prescribed herein; and it shall be the duty of said owner to make such application within six months of the slaughter of the animal for which payment is claimed, failing which such claim shall be barred by limitation.

These payments shall be made by the territorial treasurer as before provided and from the fund provided by this chapter.

The right to indemnity under this chapter is limited to animals destroyed by reason of the existence or suspected existence of some epizootic disease, generally fatal and incurable such as rinderpest, hoof and mouth disease, pleuro pneumonia, anthrax or Texas fever among bovines, glanders among horses, and anthrax among sheep. For the ordinary contagious diseases not in their nature fatal such as scab or hoof-rot in sheep, and epizootic influenzas in horses no indemnity shall be paid.

The right to indemnity shall not exist and payment of such shall not be made in the following cases:

First—For animals belonging to the United States;

Second—For animals that are brought into the territory contrary to the provisions of this chapter;

Third—For animals that are found to be diseased or that are destroyed because they have been exposed to disease before or at the time of their arrival in the territory;

Fourth—When an animal was previously affected by any other disease which from its nature and development was incurable and necessarily fatal;

Fifth—When the owner or person in charge shall have knowingly or negligently omitted to comply with the provisions of the last two preceding sections;

Sixth—When the owner or claimant at the time of coming in possession of the animal knew it to be diseased or received the notice specified in the first clause of the last preceding section. [S. L. 1882, ch. 41, § 10. S. L. 1886, ch. 85, §§ 1 and 2.]

Compensation of arbitrators.

SEC. 4209. Each member of boards of arbitration formed and acting under the provisions of this chapter shall receive for their services the sum of five dollars per day for each day they may be actually engaged and employed in the investigation of any claim, and shall be paid by the territorial veterinarian out of the "veterinarian contingent fund." [S. L. 1886, ch. 85, § 3.]

Claims rejected by veterinarian to be arbitrated.

SEC. 4210. The territorial auditor shall pay no claim for indemnity under this chapter which shall have been rejected by the territorial veterinarian, unless the same shall have been submitted, as hereinbefore provided, to a board of arbitration and by such board decided to be legal and just. If any claimant shall refuse to submit his or her claim which shall have been rejected by the territorial veterinarian, to a board of arbitration as hereinbefore provided, such refusal shall be deemed conclusive evidence of a waiver of all claim for indemnity under the provisions of this chapter. [S. L. 1886, ch. 85, § 4.]

Compensation of veterinarian and others—Deputy—Contingent fund—Bond of veterinarian.

SEC. 4211. The territorial veterinarian shall receive for his services the sum of twenty-five hundred dollars per annum together with his actual necessary traveling expenses when in performance of his duty. These payments shall be made from the fund provided by this chapter, the salary from the appropriation for salary, and the traveling expenses from the contingent fund, upon vouchers signed and sworn to by him and approved by the governor, separate vouchers being made for salary and expenses. The veterinarian is hereby authorized, in his discretion, to appoint a deputy, for the performance of whose duties the veterinarian shall be responsible, and who shall exercise such powers as may be deputed to him by the territorial veterinarian. Such deputy shall receive not exceeding four dollars per day for the time actually employed. The appraisers herein provided for shall each receive five dollars for each day or part of day they may be actually employed as such which shall be paid from their county fund upon the certificate of the justice who summoned them. The justice shall receive his ordinary fee for issuing a summons to be paid out of the county fund. The members of the board of health, veterinarians, physicians, or stock owners, called in consultation by the veterinarian shall each receive five dollars for each day or part of day they may be actually so employed and ten cents per mile mileage for distance actually traveled, which sums shall be paid from the veterinarian's contingent fund hereafter provided. For this and other incidental expenses connected with his work and made his duty by this chapter, such as his traveling expenses, causing animals to be slaughtered and their carcasses burned and disinfecting infected premises, the veterinarian shall have at his disposal the sum of five thousand dollars which shall be known as the veterinarian's contingent fund.

Before entering on the discharge of his duties he shall give good and sufficient security in the sum of five thousand dollars for the proper management of the same. He shall make a sworn statement semi-annually to the governor supported by full vouchers of the amount disbursed; any part of the five thousand dollars not used shall be covered into the territorial treasury. No constructive mileage shall be paid under this chapter. [S. L. 1882, ch. 41, § 11. S. L. 1886, ch. 104, § 1.]

Liability of territory limited to appropriation.

SEC. 4212. The liability of the territory for indemnity for animals destroyed under the provisions of this chapter, in any two years, is limited by and shall in no case exceed the amount especially appropriated for that purpose and for that period. [S. L. 1882, ch. 41, § 12.]

Special tax to pay indemnity.

SEC. 4213. It shall be the duty each year of the territorial board of equalization, at the time of making the annual assessment, to levy a special tax not exceeding one mill on the dollar upon the assessed value of all cattle, sheep, horses, and mules in the territory, to be known as the stock indemnity fund. Said tax shall be levied and collected by the several counties and paid to the territorial treasurer in the manner provided by law for the levying, collection and payment of other territorial taxes. Said fund shall constitute the indemnity fund specified by this chapter, to be used in paying for animals destroyed under the provisions thereof. It shall be used exclusively for that purpose and shall be paid out by the territorial treasurer as hereinbefore provided for. [S. L. 1882, ch. 41, § 13.]

TITLE 51. WEIGHTS AND MEASURES.

CHAPTER 1.

REGULATIONS OF.

SECTION.
4214. Standard adopted—Superintendent and his salary.
4215. Purchase of standard for each county.
4216. Counties to pay for county standards.
4217. Specified standards to be kept by counties.
4218. Assessor to be custodian and sealer of weights, etc.
4219. County standards to be annually tested.
4220. Notice of proving weights, etc., in the county.
4221. Annual sealing of weights, etc., in the county.
4222. Expenses of obtaining seals, etc., by whom paid.
SECTION.
4223. Fees of county sealers.
4224. Sealer to prove weights, etc., on request.
4225. Commissioners refusing to provide standards—Penalty.
4226. Neglect of duty by officers—Penalty.
4227. Penalty for using incorrect weights.
4228. Banks must have weights sealed.
4229. Penalty for failure by bank—Spring and platform scales.
4230. Certain cities to have public scales.
4231. Certain weights, etc., to be annually tested.
4232. City weighmasters to give weight certificates.
4233. Violating this chapter—Penalty.

Standard adopted—Superintendent and his salary.

SEC. 4214. The weights, measures and balances as adopted by the United States government, and as at present in use by said government, or as may be changed and altered at any time hereafter by said government, are hereby adopted and established as the legal public standard weights, measures and balances of this territory, and when received from the United States government shall be turned over to the territorial librarian, who shall be authorized to act as superintendent of weights, measures and balances for this territory and who shall receive out of the territorial treasury, out of any of the moneys not otherwise appropriated, an annual compensation of one hundred dollars per annum as payment for said services, and the auditor of the territory is hereby directed to pay the freight on said standard balances, weights and measures from Washington, D. C., to Cheyenne, Wyoming, out of any moneys in the treasury not otherwise appropriated. [S. L. 1884, ch. 99, § 1.]

Purchase of standard for each county.

SEC. 4215. The territorial librarian shall be authorized and is hereby directed to contract for and have manufactured a sufficient number of sets of balances, weights and measures (the measures to be of tin, cast iron, brass or compositions) as will be necessary to supply each county within the territory; the said balances, weights and measures to be delivered by the contractor at the office of the territorial librarian as they may be required by said territorial librarian, and they shall be paid for on the order of said territorial librarian out of any money in the treasury not otherwise appropriated. [S. L. 1884, ch. 99, § 2.]

Counties to pay for county standards.

SEC. 4216. Upon the application of the county commissioners of any county, the territorial librarian shall furnish said county with such balances, weights and measures as said commissioners shall designate as required, but before receiving the same, the said county shall pay into the public treasury the amount paid by the territory for the same; *Provided*, That nothing herein contained shall be so construed as to authorize the territorial librarian to have manufactured at public expense a larger number of sets of balances, weights and measures than may be necessary to fill the call of the county commissioners upon him as above mentioned. [S. L. 1884, ch. 99, § 3.]

Specified standards to be kept by counties.

SEC. 4217. The county commissioners of every county shall constantly keep for the use and at the cost of such county the following weights, measures and balances, conformable to said standards and seals, and sealed by said territorial librarian, that is to say: Of dry measure, one-half bushel, one peck and one-half peck; of wine measure, one gallon, one quart, one pint and one gill; one set of brass weights up to four pounds, computed at sixteen ounces to the pound, with suitable scales and steel beam; one set of iron weights from one pound to fifty pounds; also, of long measure, one yard, and a set of troy weights from the lowest denomination to eight ounces. Each of said measures, weights and balances shall be verified by the superintendent and sealed by him in a durable manner, according to its true weight, capacity or length. [S. L. 1884, ch. 99, § 4.]

Assessor to be custodian and sealer of weights, etc.

SEC. 4218. The weights, balances and measures provided for each county shall be in the keeping of the county assessor, and shall be kept in such place as the county commissioners may determine, and said county assessor shall be sealer of weights and measures for the county of which he is the assessor. [S. L. 1884, ch. 99, § 5.]

County standards to be annually tested.

SEC. 4219. Once in each year from the time at which they are first sealed, the said sealer of weights and measures shall cause them to be tried and proved by the said public standards, under the direction of the territorial librarian, and sealed by him anew, and if any sealer of weights and measures shall fail so to do, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined in a sum not exceeding fifty dollars. [S. L. 1884, ch. 99, § 6. S. L. 1886, ch. 70, § 1.]

Notice of proving weights, etc., in the county.

SEC. 4220. Every sealer of weights and measures shall, at least once in every year, advertise in some convenient newspaper, or put up notifications in different parts of the county, of the times and places when and where he will attend for the purpose of trying and proving such balances and weights and measures as may be brought to him for that purpose. Those which may be found or can be made to agree with the standards shall be sealed by him accordingly, and he shall deface or destroy all such as do not and cannot be made to agree therewith. [S. L. 1884, ch. 99, § 7.]

Annual sealing of weights, etc., in the county.

SEC. 4221. The said sealer of balances and weights and measures for each county shall, once in each year, go to the houses, stores or shops of every person within the county (in which he is elected assessor), who uses balances, steel-yards, platform scales or balances, weights or measures, for the purpose of buying and selling, and has failed for one year to bring or send them in at the times or places notified and advertised by him, and also to all hay scales and platform balances kept for the public use, and there try and prove such scales balances, steelyards, weights and measures and seal or deface and destroy them as may be proper. In the cases mentioned in this section the sealer of weights and measures shall have double the amount of his regular fees. [S. L. 1884, ch. 99, § 8. S. L. 1886, ch. 70, § 1.]

Expenses of obtaining seals, etc., by whom paid.

SEC. 4222. The seals and other things necessary to enable them to perform their duty shall be procured by the said territorial librarian and sealers. The cost of such as are procured by the territorial librarian shall be paid on the order of said territorial librarian out of any territorial funds not otherwise appropriated, and the cost of such as are procured by a sealer of weights and measures shall be a charge on and be paid by the county in which he was elected assessor. [S. L. 1884, ch. 99, § 9.]

Fees of county sealers.

SEC. 4223. Each sealer of weights and measures is allowed to receive for his services fees as follows: For sealing and marking every beam, twenty-five cents; for sealing and marking measures of extension, at the rate of ten cents per yard, not to exceed twenty-five cents on any one measure; for sealing and marking every weight, five cents; for sealing and marking liquid and dry measures, if the same be one gallon or more, twenty-five cents, and if less than one gallon, ten cents; and he may charge a reasonable compensation for time actually and necessarily employed in fixing, altering or repairing defective balances, weights or measures, so as to make them conform to the standard, such compensation in no case to exceed the rate of fifty cents per hour for time actually employed, and that he shall make no charge when the time employed is less than fifteen minutes. Such fees received as above provided shall be in full of all compensation as sealer of weights and measures, and no charge shall be made against any county in the territory for such services. [S. L. 1884, ch. 99, § 10.]

Sealer to prove weights, etc., on request.

SEC. 4224. Any person may call at any time upon the sealer of weights and measures in his county to try and prove the weights and measures of such person, he paying therefor the regular fees, or double fees, if the service be rendered at his own house, store or shop; *Provided*, That if any person shall call upon the sealer of weights and measures to go to his house, store or shop to perform any duties under this chapter, he or they shall pay in addition to the fees as above provided the reasonable expenses of such sealer of weights and measures, where the distance necessarily traveled shall be over three miles. [S. L. 1884, ch. 99, § 11.]

Commissioners refusing to provide standards—Penalty.

SEC. 4225. If any board of the county commissioners shall refuse to provide and keep the weights, measures and balances prescribed by law, every member of such board of the county commissioners so refusing shall be deemed guilty of a misdemeanor, and upon conviction thereof fined in a sum not less than five dollars nor more than fifty dollars. [S. L. 1884, ch. 99, § 12.]

Neglect of duty by officers—Penalty.

SEC. 4226. If the territorial librarian or any sealer of weights and measures of any county, shall wilfully or negligently fail to perform any duty imposed on him by the provisions of this chapter, he shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not less than five nor more than fifty dollars for each offense. [S. L. 1884, ch. 99, § 13.]

Penalty for using incorrect weights.

SEC. 4227. If any person shall sell, or offer to sell, any commodity by, or keep for buying or selling by, any scales, balances, steelyards, weights or measures not sealed according to law, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, fined for each offense in a sum not less than five nor more than fifty dollars; *Provided*, That if upon such scales, balances, steelyards, weights or measures being examined and proved by the sealer of weights and measures they shall prove to be correct, he or they shall not be liable to the above fine. [S. L. 1884, ch 99, § 14.]

Banks must have weights sealed.

SEC. 4228. Once in every year every bank or banking house, either public or private, shall have the weights used in such bank or banking house tried, proved and sealed, either by the territorial librarian or by the sealer of weights and measures in the county where such bank or banking house is situated. [S. L. 1884, ch. 99, § 15. S. L. 1886, ch. 70, § 1.]

Penalty for failure by bank—Spring and platform scales.

SEC. 4229. If the officers of any bank or owners of any banking house shall fail to comply with the provisions of the foregoing section, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined in a sum not less than five dollars nor more than fifty dollars, for each offense; *Provided*, That none of the provisions of this chapter shall be so construed as to prohibit the use of spring or platform scales generally used by butchers or other persons; *Provided further*, That when such spring or platform scales are used by any person or persons, they shall be tested at least once in each year, and sealed as in the case of other scales or balances. [S. L. 1884, ch. 99, § 16. S. L. 1886, ch. 70, § 1.]

Certain cities to have public scales.

SEC. 4230. It shall be the duty of said county commissioners to see that every city and town in their county containing two thousand or more inhabitants, is provided with public scales for the weighing of coal, hay and other merchandise sold by weight, and that every city and town council in their respective counties shall appoint a city or town weighmaster, whose services shall be paid for by the city or town appointing said weighmaster. [S. L. 1886, ch. 70, § 1.]

Certain weights, etc., to be annually tested.

SEC. 4231. It shall be the duty of the sealer of weights and measures to test all weights and measures that are in use for the sale of liquids or solids in his county, at least once in every twelve months, and he shall bring action against any company or person who may defraud or cheat, or attempt to defraud or cheat any person or persons by the use of short weights or measures. [S. L. 1886, ch. 70, § 1.]

City weighmasters to give weight certificates.

SEC. 4232. It shall be the duty of all city or town weighmasters to furnish a certificate of all merchandise weighed by them, to teamsters or other persons who may deliver coal, hay or other merchandise sold by weight, so that said certificate shall be given to the purchaser. [S. L. 1886, ch. 70, § 1.]

Violating this chapter—Penalty.

SEC. 4233. Any person violating the provisions of this chapter, shall, upon conviction, be fined in the sum of not more than five hundred dollars, or be imprisoned for a term of not more than six months in the county jail. [S. L. 1886, ch. 70, § 1.]

TITLE 52. WILD ANIMALS.

CHAPTER 1.

BOUNTY FOR DESTRUCTION OF.

SECTION.
4234. Bounty for wolves, wild cats, etc.
4235. Bounty for gophers, prairie dogs, etc.
SECTION.
4236. Fraudulent claims to be disallowed.

Bounty for wolves, wild cats, etc.

SEC. 4234. The county commissioners of the various counties in this territory are hereby authorized and required to encourage the destruction of wolves, wild cats, lynx, bear and mountain lion, by making payment out of the county fund to any persons who shall engage in the destruction of the several animals hereinbefore named, the sums of money as herein designated, as a bounty for the destruction of said animals, viz.: For each wolf or coyote, one dollar and fifty cents; for each wild cat, twenty-five cents; for each lynx, twenty-five cents; for each bear, five dollars; for each mountain lion, five dollars. The person or persons so engaged who may desire the compensation above named, shall present to the clerk of the county in which the animals were killed, the entire skin or pelt of such animals, together with all the paws attached, accompanied by an affidavit stating that the animal from which such skin or pelt was taken was killed in this territory and in the county where the claim is made, by the person or persons so presenting, and that the said animal was not killed before March third, eighteen hundred and eighty-four. It shall thereupon be the duty of the county clerk to give the person or persons who shall produce the evidence hereinbefore required, a certificate stating the number of animals of each kind killed and to what sum the person or persons are entitled under this section, which certificate may be filed with the clerk of the board of county commissioners as a claim against said county, to be by him presented to the board of county commissioners at their next meeting thereafter; at which time the board of county commissioners may order a warrant drawn upon the county treasury as in other cases. It shall be the duty of the county clerk to cause any person presenting the skin or pelt, to detach all the four paws and punch a hole in each ear one-fourth of an inch in diameter, in the presence of said clerk, at the time of the presentation of the skin or pelt, of every animal hereinbefore specified, and at once to destroy the same. [S. L. 1884, ch. 100, § 1.]

Bounty for gophers, prairie dogs, etc.

SEC. 4235. The county commissioners of the several counties of this territory are hereby authorized and required to encourage the destruction of badgers, gophers, prairie dogs and ground squirrels in this territory, by payment out of the county fund to any person or persons who shall engage in the destruction of any of the above named animals the sum hereinafter designated, as a bounty, for the destruction of such animals, viz: For each badger, twenty-five cents; for each gopher, prairie dog or ground squirrel, five cents. The person so engaged, who may desire the compensation above named, shall present to the county clerk of the county in which such animals are killed, the entire skin or pelt of the badger with all the paws attached, and the scalp only of gophers prairie dogs and ground squirrels, accompanied by an affidavit showing that the animals were killed within this territory, and in the county where the claim is made, and that they were not killed previous to March third, eighteen hundred and eighty-six. It shall be the duty of the county clerk to give the person or persons who shall produce the evidence above required a certificate, stating the number of animals of each kind killed, and the amount such person or persons are entitled to under this section, which certificate may be filed with the county clerk or clerk of the board of county commissioners, as a claim against such county, to be by him presented to the commissioners at their next regular meeting thereafter, at which meeting the board may order a warrant drawn for the amount on the county treasurer, as in other cases.

It shall be the duty of the county clerk to require any person or persons presenting the skin or pelt of any badger to detach the paws from the same, and to destroy the same in his presence, and to punch a hole not less than one-fourth of an inch in diameter in each ear. And he shall require any person or persons presenting the scalp of any gopher, prairie dog or ground squirrel, to destroy such scalp or scalps in his presence. [S. L. 1886, ch. 32, § 1.]

Fraudulent claims to be disallowed.

SEC. 4236. Nothing in this chapter shall be so construed as to prevent the board of county commissioners from disallowing any claim, should it appear fraudulent. [S. L. 1884, ch. 100, § 2. S. L. 1886, ch. 32, § 2.]

TITLE 53. APPROPRIATIONS.*

CHAPTER 1.

FOR THE FISCAL YEARS 1886 AND 1887.

SECTION.

4237. Expenses of joint auditing committee.
4238. Keeping of territorial prisoners and juvenile delinquents.
4239. Compensation and contingent expenses of penitentiary commission.
4240. Salary of attorney general.
4241. Salary and commissions of treasurer.
4242. Salary of auditor.
4243. Salary of veterinarian.
4244. Contingent expenses of various territorial officers.
4245. Salary and contingent expenses of geologist and mining engineer.
4246. Salary and mileage of stenographer.
4247. Salary of librarian and *ex-officio* superintendent, etc.
4248. Salary of inspector of coal mines.
4249. Contingent expenses, etc., of inspector of coal mines.
4250. Expenses of insurance commissioner.
4251. Expenses, etc., of territorial library.
4252. Traveling expenses of teachers.
4253. Contingent expenses of clerk of supreme court.
4254. Purchase, etc., of weights and measures.
4255. Expenses of messenger to bring election returns.
4256. Contingent expenses of judges.
4257. Compensation of revision commissson.
4258. Application of appropriations.
4259. Payment of capitol building, etc., funds.
4260. Limitation on expenditures.
4261. Salary and contingent expenses of fish commissioner.
4262. Hatching house and house for superintendent.
4263. Expenses of transporting and purchasing fish.
4264. Blind, deaf and dumb institute.
4265. Aid to fair associations.
4266. Monument to William Hale.
4267. Erection of monument and payment of appropriation.
4268. Appointment of auditing committee.

Expenses of joint auditing committee.

SEC. 4237. That the sum of six hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay and defray the expenses of the joint committee, appointed by the ninth legislative assembly, to audit the accounts of the territorial treasurer and auditor, in the month of March, eighteen hundred and eighty-six, and in the month of March, eighteen hundred and eighty-seven. [S. L. 1886, ch. 113, § 6.]

Keeping, etc., of territorial prisoners and juvenile delinquents.

SEC. 4238. That the sum of twelve thousand five hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay for the keeping and transporting of territorial prisoners and juvenile delinquents, for the two years next ensuing. [S. L. 1886, ch. 113, § 7.]

Compensation and contingent expenses of penitentiary commission.

SEC. 4239. That the sum of two thousand dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in territorial treasury not otherwise appropriated, to pay the penitentiary commission, and all contingent expenses connected therewith, for the two years next ensuing. [S. L. 1886, ch. 113, § 8.]

Salary of attorney general.

SEC. 4240. That the sum of two thousand four hundred dollars, or so much thereof as may be necessary, be and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the salary of the attorney general of the territory for the two years ensuing. [S. L. 1886, ch. 113, § 10.]

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*The appropriations contained in these Revised Statutes are those remaining unexpended, in whole or in part, on the first day of January, 1887.

Salary and commissions of treasurer.

SEC. 4241. That the sum of two thousand eight hundred dollars, or so much thereof as may be necessary, be and the same is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated, to pay the salary and commissions of the territorial treasurer for the two years next ensuing, being eight hundred dollars for salary and two thousand dollars for commission. [S. L. 1886, ch. 113, § 11.]

Salary of auditor.

SEC. 4242. That the sum of two thousand and four hundred dollars, or so much thereof as may be necessary, be and the same is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated to pay the salary of the territorial auditor for the two years next ensuing. [S. L. 1886, ch. 113, § 12.]

Salary of veterinarian.

SEC. 4243. That the sum of five thousand dollars or so much thereof as may be necessary, be and the same is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated, to pay the salary of the territorial veterinarian for the two years next ensuing. [S. L. 1886, ch. 113, § 13.]

Contingent expenses of various territorial officers.

SEC. 4244. That the sum of ten thousand eight hundred dollars, or so much thereof as may be necessary, be and the same is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated, to pay the contingent expenses of territorial officers for the two years next ensuing, as follows, to-wit: For the governor's office, two thousand four hundred dollars; for the secretary's office, one thousand two hundred dollars; for the attorney general's office, six hundred dollars; for the auditor's office, eight hundred dollars; for the treasurer's office, eight hundred dollars; for the veterinarian's office, five thousand dollars, which shall include the salary of the deputy. [S. L. 1886, ch. 113, § 14.]

Salary and contingent expenses of geologist and mining engineer.

SEC. 4245. The sum of three thousand six hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury, not otherwise appropriated, to pay the salary of the territorial geologist and mining engineer for the two years next ensuing; and that the sum of two thousand two hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury, not otherwise appropriated, to pay the contingent expenses of the territorial geologist and mining engineer, for the two years next ensuing, which contingent fund shall be used in part for the maintenance of an office, for such officer, in which shall be kept and displayed the mineral and geological specimens coming into his hands, and where shall be kept the territorial assay apparatus and material. [S. L. 1886, ch. 113, § 15.]

Salary and mileage of stenographer.

SEC. 4246. That the sum of five thousand six hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury, not otherwise appropriated, to pay the salary and mileage of the territorial stenographer for the two years next ensuing, being for salary three thousand six hundred dollars, and for mileage two thousand dollars. [S. L. 1886, ch. 113, § 16.]

Salary of librarian and ex-officio superintendent, etc.

SEC. 4247. That the sum of one thousand and six hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any funds in the territorial treasury, not otherwise appropriated, to pay the salary of the territorial librarian and *ex-officio* superintendent of public instruction, for the two years next ensuing. [S. L. 1886, ch. 113, § 17.]

Salary of inspector of coal mines.

SEC. 4248. That the sum of five thousand dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury, not otherwise appropriated, to pay the salary of the territorial inspector of coal mines, for the two years next ensuing. [S. L. 1886, ch. 113, § 18.]

Contingent expenses, etc., of inspector of coal mines.

SEC. 4249. That the sum of five hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to be used in purchasing the necessary instruments for the territorial inspector of coal mines; and that the sum of fifteen hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the contingent expenses of the territorial inspector of coal mines, for the two years next ensuing; the funds appropriated in this section to be paid out on warrants issued on itemized vouchers, approved by the governor of the territory. [S. L. 1886, ch. 113, § 19.]

Expenses of insurance commissioner.

SEC. 4250. That the sum of six hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the actual traveling and contingent expenses of the insurance commissioner for the two years next ensuing. [S. L. 1886, ch. 113, § 20.]

Expenses, etc., of territorial library.

SEC. 4251. That the sum of three thousand four hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the rent of rooms occupied by the territorial library, and the contingent expenses of the office of territorial librarian and *ex-officio* superintendent of public instruction; and that the sum of one thousand seven hundred and fifty dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds of the territorial treasury not otherwise appropriated, to pay premiums on insurance of not less than twelve thousand dollars, upon the territorial library, and to purchase books for said library; being seven hundred and fifty dollars for insurance and one thousand dollars for the purchase of books. [S. L. 1886, ch. 113, § 21.]

Traveling expenses of teachers.

SEC. 4252. That the sum of fifteen hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the traveling expenses of such teachers of the territory as shall attend the meeting of the teacher's institute of the territory, said fund to be divided among the teachers so attending under the direction of the territorial librarian and *ex-officio* superintendent of public instruction. [S. L. 1886, ch. 113, § 22.]

Contingent expenses of clerk of supreme court.

SEC. 4253. That the sum of eight hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the necessary contingent expenses of the clerk's office of the supreme court of the territory, the same to be paid quarterly, upon vouchers approved by at least two judges of the supreme court. [S. L. 1886, ch. 113, § 23.]

Purchase, etc., of weights and measures.

Sec. 4254. That the sum of five hundred dollars, or so thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the salary of the territorial librarian, as superintendent of weights and measures, and for the purposes of carrying into effect the other provisions of the law relating to weights and measures. [S. L. 1886, ch. 113, § 24.]

Expenses of messenger to bring election returns.

Sec. 4255. That the sum of two hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury, no otherwise appropriated, to carry into effect the provisions of section eleven hundred and thirty. [S. L. 1886, ch. 113, § 25.]

Contingent expenses of judges.

Sec. 4256. That the sum of twelve hundred dollars, or so much thereof as may be necessary, be and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay an annual sum of two hundred dollars to each of the judges of the supreme court for the two years next ensuing, the same to be paid quarterly, and to be in lieu of any reimbursement for traveling and other contingent expenses. [S. L. 1886, ch. 113, § 29.]

Compensation of revision commission.

Sec. 4257. That the sum of four thousand five hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated, out of any funds in the territorial treasury not otherwise appropriated, to pay the commission to prepare, edit, and superintend the publication of the Revised Statutes of Wyoming, viz: Three commissioners, one thousand dollars each, and two clerks seven hundred and fifty dollars each. [S. L. 1886, ch. 113, § 32.]

Application of appropriations.

Sec. 4258. The appropriations hereinbefore provided for in this chapter shall be construed to be for the two fiscal years next ensuing after March thirty-first, eighteen hundred and eighty-six, excepting such appropriations as are made herein to pay any indebtedness or liability which may have accrued, or may accrue, before that time, and excepting appropriations wherein it is otherwise expressly provided; and the appropriations herein made for contingent expenses, for the two years next ensuing, shall be payable quarterly, at the end of each quarter; *Provided*, That the balance remaining in any contingent fund at the end of any quarter may be used to pay the bills of any subsequent quarter. [S. L. 1886, ch. 113, § 34.]

Payment of capitol building, etc., funds.

Sec. 4259. The funds provided by the several acts of the ninth legislative assembly for the erection of a capitol building, a university building and an insane asylum, shall be paid out by the territorial treasurer upon warrants drawn by the territorial auditor, in the manner provided in the several acts relating to the erection of said buildings, without any further appropriation or provision of law. [S. L. 1886, ch. 113, § 37.]

Limitation on expenditures.

Sec. 4260. No other moneys shall be paid out of the territorial treasury for the next ensuing two years, than are provided for by the acts passed at the session of the ninth legislative assembly. [S. L. 1886, ch. 113, § 40.]

Salary and contingent expenses of fish commissioner.

Sec. 4261. There is hereby appropriated out of the territorial treasury, not otherwise appropriated, the sum of three hundred and fifty dollars per year for the salary of the territorial fish commissioner, and the sum of nineteen hundred dollars per year, or as much thereof as may be necessary for the payment of all contingent expenses of the territorial fish commissioner. [S. L. 1886, ch. 45, § 15.]

Hatching house and house for superintendent.

SEC. 4262. There is hereby appropriated out of the territorial treasury, not otherwise appropriated, the sum of two thousand dollars for the purpose of enlarging the present hatch house and building a suitable house for the superintendent, the work to be done under the direction of the fish commissioner; *Provided*, That no part of this appropriation shall be expended until title to the land on which such improvements are made shall be vested in the territory. [S. L. 1886, ch. 45, § 16.]

Expenses of transporting and purchasing fish.

SEC. 4263. There is hereby appropriated out of the territorial treasury, not otherwise appropriated, the sum of five hundred dollars, for the transportation, expense and purchase of the Mississippi river species of fish and transplanting to the waters of the territory. [S. L. 1886, ch. 45, § 17.]

Blind, deaf and dumb institute.

SEC. 4264. The sum of eight thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the territorial treasury not otherwise appropriated, for the purpose of carrying out the provisions of chapter three of title forty-two for the two fiscal years next ensuing after March thirty-first, eighteen hundred and eighty-six. [S. L. 1886, ch. 77, § 15.]

Aid to fair associations.

SEC. 4265. There is hereby appropriated out of the general fund of the territory, not otherwise appropriated, a sum not to exceed the sum of five thousand dollars, for the purpose of paying the twenty-five per cent. of the annual premiums paid by corporations under the provisions of section five hundred and seventy-nine. [S. L. 1886, ch. 84, § 2.]

Monument to William Hale.

SEC. 4266. The sum of five hundred dollars be, and the same is hereby appropriated, out of any funds in the territorial treasury, not otherwise appropriated, to be used in erecting a monument to the memory of William Hale, deceased, late governor of this territory, and in paying the expenses incident to his funeral. [S. L. 1886, ch. 107, § 1.]

Erection of monument and payment of appropriation.

SEC. 4267. Such monument shall be erected under the direction of the administrator of the estate of such late governor, and the territorial auditor shall draw his warrants on the territorial treasurer in favor of the said administrator for the sum hereby appropriated, at such time as such administrator shall present proper proofs of the erection of such monument, and of the expenses incident to such funeral; and the said warrants shall be paid on presentation to the territorial treasurer. [S. L. 1886, ch. 107, § 2.]

Appointment of auditing committee.

SEC. 4268. That A. S. Peabody, J. M. Tompkins, and Frank Williams be, and the same are, hereby declared appointed as a committee to examine the accounts of the territorial auditor, and treasurer, for the following two years, as provided for in section seventeen hundred and twenty-two. [S. L. 1886, Council Joint Res. No. 7, p. 466.]

TITLE 54. REVISED STATUTES.

CHAPTER 1.

PREPARATION AND PUBLICATION—FORCE AND EFFECT.

SECTION.
4269. Adoption of Revised Statutes—When to take effect.
4270. Repealing provisions—Saving of accrued rights.
4271. Acts of ninth legislative assembly not affected.
4272. Commissioners to prepare for publication.
4273. Duties of commissioners.
4274. Publication of Revised Statutes.
4275. Advertising for bids—Award of contract.
4276. Appropriation for printing and binding.
SECTION.
4277. Clerks of commission.
4278. Commissioners to give bonds.
4279. Salary of commissioners.
4280. Governor to inspect books.
4281. Distribution of Revised Statutes.
4282. Vacancies in commission.
4283. Appropriation for contingent expenses.
4284. Secretary to deliver original act to commission.
4285. Authentication of Revised Statutes.
4286. In force.

AN ACT to adopt and establish the Revised Statutes of Wyoming, and providing for the editing and publishing of the same.

(Approved March 10, 1886.)

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Adoption of Revised Statutes—When to take effect.

SEC. 4269. (SEC. 1.) That the following titles, chapters and sections, subject to any enactments adopted by the ninth legislative assembly of Wyoming, and subject to the provisions of this act, shall on and after the first day of January, A. D. eighteen hundred and eighty-seven, constitute the Revised Statutes of Wyoming.

* * * * * * *

NOTE—The titles, chapters and sections which formed a part of, and which were enacted by this section, together with the laws enacted by the ninth legislative assembly, are included in the preceding sections of these Revised Statutes.

Repealing provisions—Saving of accrued rights.

SEC. 4270. (SEC. 2.) That all statutes in force when the revised statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed. This section shall take effect and be in force from and after the first day of January, A. D. eighteen hundred and eighty-seven; *Provided*, *however*, That such repeal shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, or prosecution had or commenced in any cause, civil or criminal, before the said repeal, but all rights and liabilities under said acts shall continue and be enforced in the same manner as if said repeal had not been made, and all offenses committed, and all penalties and forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner, and with the same effect as if said repeal had not been made.

Acts of ninth legislative assembly not affected.

SEC. 4271. (SEC. 3.) Any and all enactments of the ninth legislative assembly of Wyoming shall be and continue in full force and effect, at the time and in the manner therein provided, and no repealing clause of this act shall be construed to repeal or affect the same, or any part thereof, anything herein contained to the contrary notwithstanding.

Commissioners to prepare for publication.

SEC. 4272. (SEC. 4.) That the governor of the Territory of Wyoming be, and he is hereby authorized by and with the advice and consent of the council, to appoint three persons, learned in the law, as commissioners to prepare for publication the revised statutes of Wyoming Territory, including the titles, chapters and sections hereby enacted, together with all acts adopted and passed by the ninth legislative assembly of Wyoming, and also all acts of congress affecting or relating to Wyoming Territory, and such other matter as in their judgment will tend to increase the value and usefulness of the work.

Duties of commissioners.

SEC. 4273. (SEC. 5.) That in preparing said statutes for publication the aforesaid commissioners shall incorporate into their work all the laws enacted by the ninth legislative assembly of Wyoming under their appropriate titles and headings, and in their whole work they shall bring together all statutes and parts of statutes which from similarity of subjects ought to be brought together, omitting all redundant, obsolete and repealed enactments, and they shall arrange the same under titles, chapters, and sections, or other suitable divisions and sub-divisions, with head notes briefly expressed, of the matter contained in such divisions, also with side notes so drawn to point to the context of the text, and with reference to the original text from which such section is compiled; and such annotations as they may deem advisable, and they shall also provide a complete and analytical index of their entire work, to be published with the same and to be a part thereof; and in the discharge of their duties they shall review the entire compilation submitted to the ninth legislative assembly.

Publication of revised statutes.

SEC. 4274. (SEC. 6.) There shall be published in one volume in permanent form as many copies of the revised statutes, herein provided for, as can be secured for the sum hereby appropriated, which shall be designated and cited as the Revised Statutes of Wyoming, and the said commissioners shall prepare, edit and superintend its publication, including the proof reading.

Advertising for bids—Award of contract.

SEC. 4275. (SEC. 7.) As soon as said work is ready for publication the said commissioners shall advertise in five newspapers in the Territory of Wyoming for bids for the printing and binding of said work, and it shall be the duty of said commissioners to let the printing and binding of said work to the lowest and best responsible bidder, under such restrictions as the said commissioners shall deem proper, but they may reject any and all bids; *Provided however*, If said commissioners can secure as many as five thousand copies of the Revised Statutes, as herein provided for, to be published within the Territory of Wyoming for the sum hereby appropriated, then and in that event they are authorized and required to let the contract for publishing the same within the territory.

Appropriation for printing and binding.

SEC. 4276. (SEC. 8.) There are hereby appropriated out of the treasury of Wyoming Territory, not otherwise appropriated, the sum of twelve thousand five hundred dollars to pay for the printing and binding of said work. And it is hereby made the duty of the auditor of Wyoming Territory to draw his warrant upon the treasurer of the territory for the amount due to the contractor or contractors for the printing and binding of said work, whenever there is filed in his office the certificate of said commissioners, or a majority of them, that such contractor or contractors are entitled to the same, and stating the amount to which such contractor or contractors may be entitled.

Clerks of commission.

SEC. 4277. (SEC. 9.) Said commissioners may employ not to exceed two clerks to assist them in the discharge of the duties required of them by this act, each of whom shall receive a salary of not to exceed seven hundred and fifty dollars, to be paid out of the territorial treasury, and it is hereby made the duty of the territorial auditor to draw his warrant upon the treasurer for the amount of such salary when there is filed in his office the certificate of said commissioners, or a majority of them, that he is entitled to such salary and stating the amount thereof.

Commissioners to give bonds.

SEC. 4278. (SEC. 10.) Each of said commissioners is hereby required, before entering upon the discharge of his duties as herein provided, to file with the secretary of Wyoming Territory a good and sufficient bond in the sum of ten thousand dollars, to the people of the Territory of Wyoming, to be approved by the governor of Wyoming, conditioned for the faithful performance of his duties as required of him by this act.

Salary of commissioners.

SEC. 4279. (SEC. 11.) Each of said commissioners shall receive for his services as such a salary of one thousand dollars, to be paid out of the treasury of the territory, and it is hereby made the duty of the auditor of this territory to draw his warrant in favor of each of said commissioners, upon the treasurer of the territory for the full amount of his salary, as herein provided for, whenever there shall be filed in his office by the governor of the territory, a certificate certifying that said commissioner has discharged his duties in conformity with the provisions of this act, and stating the amount to which he is entitled.

Governor to inspect books.

SEC. 4280. (SEC. 12.) Upon the completion of the printing and binding of said books, said commissioners shall cause the same to be deposited with the territorial librarian, and upon being notified of such deposit, the governor shall inspect the same, and if satisfied that the provisions of this act have been complied with, shall issue the certificate provided for in the preceding section.

Distribution of revised statutes.

SEC. 4281. (SEC. 13.) The territorial librarian is hereby authorized and required to distribute and dispose of the revised statutes as follows, to wit: The county clerk of each organized county shall make a requisition on the territorial librarian for as many copies of the statutes as said county may be entitled to, and he shall name the conveyance or means of transportation, and also specify to whom they shall be directed, and to whose care, and upon the receipt of such requisition, the librarian shall at once forward the required number of copies as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the librarian, which receipt shall be filed in the office of the librarian of the territory, and the county so obtaining the statutes shall pay all cost of transportation of the same. The county clerk shall distribute one copy of the statutes to each officer of the county and precinct. Each member of each legislative assembly shall be furnished by the librarian with one copy, at the commencement of each session for which he is elected. It shall be the duty of the librarian, on receiving the statutes aforesaid, to notify the county clerk of each and every organized county, that said laws are ready for distribution, and that he can receive the number of copies to which his county is entitled upon making a requisition for the same. The librarian shall also distribute to the governor of the territory ten copies, and to each of the members of the ninth legislative assembly, to each judge and clerk of a court of record, and to each mayor of a municipal corporation one copy, and one hundred copies shall be reserved by him, to be distributed by him, to the library of congress at Washington, and to state and territorial and public libraries, and when so distributed the librarian shall take receipts for same, and file such receipts in his office, and for all purposes above specified there shall be reserved and set apart by the librarian, one thousand copies. The remainder of said volumes shall be under the immediate care and charge of the territorial librarian, who shall sell the same, as demand therefor occurs, at and for the sum and price of five dollars per copy, and all sums thus received by said librarian shall be forthwith paid over by him to the territorial treasurer, for the use and benefit of the territory.

Vacancies in commission.

SEC. 4282. (SEC. 14.) In the event of the death, disability, resignation or refusal to act of any one of said commissioners, such vacancy shall be filled by appointment by the governor.

Appropriation for contingent expenses.

SEC. 4283. (SEC. 15.) There is hereby appropriated from the funds of the teritorial treasury, not otherwise appropriated, the sum of three hundred dollars, or so much thereof as may be necessary, for stationery, office rent, furniture and such other expenses as may be deemed necessary by the said commissioners. The territorial auditor shall draw warrants to pay for the same on orders signed by the said commissioners (or a majority of them) specifying the amount and to whom the same shall be paid.

Secretary to deliver original act to commission.

SEC. 4284. (SEC. 16.) It is hereby made the duty of the secretary of the territory to deliver this original act, including the accompanying revision and compilation, to said commissioners, or a majority of them, whenever they may apply for the same, and take their receipt thereof; and he shall also furnish them with his certificate for publication with their work, certifying that the same is the original act and accompanying revision and compilation; and it is also made the duty of said commissioners to return the same to the secretary when they have completed their labors as herein required.

Authentication of Revised Statutes.

SEC. 4285. (SEC. 17.) On the completion of their work, said commissioners, or a majority of them, shall append their certificate thereto, certifying to the completeness and accuracy of said work, and that they have complied with the provisions of this act.

In force.

SEC. 4286. (SEC. 18.) Sections three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this act shall take effect and be in force from and after their passage.

AUTHENTICATION.

SECRETARY'S CERTIFICATE.

TERRITORY OF WYOMING,
Secretary's Office.

Cheyenne, May 13th, 1886.

I do hereby certify, that I have this day delivered the original enrolled act entitled "An act to adopt and establish the Revised Statutes of Wyoming and providing for the editing and publishing of the same," approved March 10th, 1886, with the accompanying revision and compilation, to John W. Blake, Willis Van Devanter and Isaac P. Caldwell, the commissioners appointed to prepare, edit and superintend the publication of the Revised Statutes of Wyoming pursuant to the act aforesaid.

[SEAL.] In Testimony Whereof, I have hereunto set my hand and affixed the great seal of the Territory the date first above written.

E. S. N. MORGAN,
Secretary of Wyoming Territory.

COMMISSIONERS' CERTIFICATE.

Territory of Wyoming,
Cheyenne, May 27th, 1887.

We, the undersigned Commissioners appointed to prepare, edit, and superintend the publication of, the Revised Statutes of Wyoming, pursuant to "An Act to adopt and establish the Revised Statutes of Wyoming and providing for the editing and publishing of the same," approved March 10th, 1886, do hereby certify that we have prepared, edited, and superintended the publication of the Revised Statutes of Wyoming, pursuant to the act aforesaid; that we have in all things complied with the provisions of the said act; that said work was completely and accurately done; that the foregoing statutes entitled "Revised Statutes of Wyoming," being sections one to section forty-two hundred and eighty-six, both inclusive, are the Revised Statutes of Wyoming as prepared, edited, and published under our superintendence as aforesaid, and that the same embrace all the statute laws of the Territory of Wyoming in force on the first day of January, A. D. 1887.

John W. Blake,
Willis Van Devanter,
Isaac P. Caldwell,
Commissioners.

INDEX TO REVISED STATUTES.

Section
ABANDONMENT,
of children, penalty............2284, 2285
ABATEMENT. *See actions, survival of, see revivor.*
no, in dissolution of corporations 649
actions shall not abate upon marriage 2401
actions shall not abate upon assignment 2401
of actions by death................ 2531
no abatement in attachment, when.. 2908
plea in, criminal action............. 3263
ABORTION,
penalty for......................879, 880
ABSTRACTS,
to be kept in office of register of deeds 1849,–1854
ACCESSORIES,
defined 868
after the fact....................... 869
ACCIDENT,
ground for new trial............... 2652
ACCOUNTS,
rate of interest upon............... 1313
copies of shall be filed with pleadings. 2472
ACKNOWLEDGMENT,
of instruments within territory, how and by whom taken........... 8
of instruments without territory, how and by whom taken...........11, 14
unauthorized—penalty 945
of conveyance of homestead, by wife. 2784
ACTIONS,
right of, when property destroyed by firing woods or prairie........... 921
for damages in spreading contagious diseases 1013
in divorce proceedings............. 1576
right of, upon non-compliance with mining laws................... 1655
by or against counties, how brought.. 1795
right of, against railroad companies for not plowing fire guards 1949
what survive.... 2059–2061
but one form—distinctions abolished. 2360
parties to, how designated........... 2361
time of commencing............2363, 2381
when deemed commenced........... 2376
parties to general provisions.....2382–2407
joinder of, general provisions ...2408–2410
venue of......................2411–2421
consolidation of 2507
order in which tried............... 2521
when triable 2522
for discovery...................... 2641
revivor of.................... 2531–2547
when parties to, shall testify......... 2590

Section.
ACTIONS—*Continued.*
dismissal of..................2660–2662
proceeding against equitable assets, etc., in aid of execution 2812
against garnishee................... 2899
concerning realty..............2985–3019
of replevin........................ 3020
on undertaking in replevin.......... 3036
by surety for indemnity before debt is due.......................... 3051
for relief against illegal taxes and assessments..................3053–3056
to contest wills.................... 3058
in *quo warranto*................3092–3125
presumptions in, to recover road tax. 3885
by and against special partnerships... 4081
SURVIVAL OF,
saving clause..................... 2363
causes of action that survive....... 2364
actions for death, which survive...2364*a*
actions shall be in name of representatives—limitation.........2364*b*
special limitation of sale.......... 2365
ADJOURNMENT OF COURTS,
of supreme court.................. 824
by clerks of district court............ 845
ADMINISTRATORS. *See executors and administrators; see personal representatives.*
ADMISSION,
of genuineness of documents may be required 2636
ADOPTION,
application for—jurisdiction of probate judge..................... 2274
consent necessary.................. 2275
record of judges of approval......... 2276
effect of adoption.................. 2277
discretion of probate judge.......... 2278
absent parents shall consent in writing 2279
special terms of adoption and record thereof........................ 2280
legalization of certain adoption...... 2281
authority of county commissioners concerning abandoned or orphan children....................... 2282
parents may reclaim children........ 2283
penalty for abandoning child........ 2284
liability of civil action for abandonment 2285
name and status of adopted child.... 2286
ADULTERATIONS,
selling liquor, adulterated........... 1004
selling merchandise, adulterated..... 1007
ADULTERY,
defined—evidence 991

Section.
ADULTERY—*Continued.*
evidence of, in divorce proceedings... 1598
ADVANCEMENTS,
determination of..............2224, 2225
ADVERSE POSSESSION,
shall invalidate conveyance, when.. 7
ADVERTISING, LEGAL,
shall be in brevier type 1818
rates of.............................. 1819
AFFIDAVIT,
in verification of pleadings 2492–2496
testimony may be taken, by......... 2609
defined 2610
use of 2611
before whom made 2612
AFFIRMATION,
who may make 3413
AFFRAY,
defined 973
AGE,
of jurors 3376
of exemption from poll tax 3771
AGENT,
may verify pleadings, when......... 2496
shall list property of principal for assessment.................... 3785
AGISTORS,
lien on live stock 1470
AGREEMENTS. *See contracts.*
AGRICULTURAL ASSOCIATIONS,
See fair associations.
AGRICULTURAL SOCIETIES,
property of, exempt from taxation... 3771
AID SOCIETIES, MUTUAL,
may incorporate 566
limitation upon right to hold property. 568
officers shall receive no salary....... 574
AID TO RAILROAD CORPORATIONS,
commissioners authorized to issue bonds—term and execution of bonds—payment 556
registration of bonds—fee of treasurer............................ 557
bonds shall be authorized by election 558
application for aid—bond election.... 559
delivery of bonds.................. 560
annual tax to pay interest and principal 561
roads running north and south only to receive aid—Albany County excepted 563
what counties cannot give aid....... 565
ALBANY COUNTY,
may issue bonds to any railroad companies whose lines run through the City of Laramie 563
boundaries of 657
county seat of...................... 658
in second judicial district........... 839
deputy sheriffs in................... 1861
warrants of, when receivable for taxes.....................3815, 3816
order of paying warrants of......... 3816
width of road leading to U. P. R. R.. 3868
may build roads outside of county 3898, 3899
limit on school tax................. 3927
school district No. 1, bonds, (1882) 3983–3994

Section.
ALBANY COUNTY—*Continued.*
school district No. 1, bonds, (1886) 3995–4006
restriction on bulls running at large in 4136–4139
lawful fence in..................... 4182
ALIAS WRITS,
when issued 2427
in execution against unsold goods ... 2733
against realty 2751
for sale in partition 2976
ALIENATION OF PERSONALTY,
chattel mortgages 70–91
ALIENATION OF REALTY,
of realty, conveyances of, how and by whom made............... 1
married women may convey....... 2
effect of quit-claim deed of......... 3
conveyance by tenant for life or years............................. 4
no implied covenants in conveyances . 5
in mortgages, no implied covenant to pay mortgage debt............. 6
adverse possession does not invalidate conveyance.................... 7
execution and acknowledgment of conveyances within the territory........................... 8
clerks of court, anywhere, may take acknowledgments.............. 9
execution, and acknowledgment of conveyances out of territory.11, 12, 14
conveyance by non-resident married women........................ 13
when conveyance may be recorded. 15
recorded conveyance is constructive notice............ 17
unrecorded conveyance, when void .. 18
recorded conveyances of church pews.......................... 19
when conveyance, or the record thereof, admissible as evidence.. 20
absolute conveyance not affected by unrecorded deed of defeasance... 21
recording assignment of mortgage not notice to mortgagor......... 22
"purchaser" defined 23
"conveyance" defined 24
power of attorney is not conveyance—record of power of attorney and executory contract............. 25
revocation of power of attorney to be recorded....................... 26
seal, what shall constitute 27
conveyance heretofore properly executed shall be recorded.......... 28
recording conveyances improperly executed—penalty 29
mortgages, may be assigned or discharged on margin of record..... 30
mortgages, discharge by certificate... 31
mortgagee failing to discharge—liability 32
construction of words 33
conveyance of fee simple, no words of inheritance necessary......... 34
quit-claim deeds—word release unnecessary 35
foreclosure of realty mortgages 36–51
deeds of trust 52–55

Section.

ALIENATION OF REALTY—*Continued.*
  clouds from title removed 56.–69
ALIEN LABOR,
  contracts for void—rights of aliens—penalties....................1075, 1077
ALIENS,
  shall have right of inheritance....... 2226
  cannot acquire realty. *See laws of congress in appendix.*
ALIMONY. *See divorce.*
  in divorce proceedings. ...1578, 1581–1587
ALLEGATIONS,
  When deemed true, and when deemed denied.......................... 2468
  material, defined.................. 2469
  may be made define by amendment.. 2475
  in pleading shall be liberally construed 2483
AMENDMENTS,
  to make pleadings more definite..... 2475
  when petition may be amended without leave.................... 2498
  amendment after demurrer filed..... 2499
  pleading after demurrer is overruled. 2500
  amendments in furtherance of justice 2501
  immaterial errors and defects disregarded........................ 2502
  amendments when demurrer is sustained......................... 2503
  further time for trial after amendment 2504
  suing by fictitious name............ 2505
  supplemental pleadings............. 2506
  consolidation of actions............ 2507
  in case of variance..............2642, 2643
  payments of costs of............... 2694
AMERCEMENT,
  causes for......................... 2942
  notice of motion for................ 2943
  for failure to serve or return process. 2944
  of clerks of court.................. 2945
  amount of, for not paying over money. 2946
  surety of officer may be made party to judgment 2947
  officer may be subrogated to right of judgment plaintiff.............. 2948
AMUSEMENT ASSOCIATIONS,
  may incorporate.................... 566
  limitation upon dividends........... 573
ANIMALS. *See wild animals.*
ANSWER,
  in *habeas corpus* proceedings......... 1292
  allowed in pleadings 2446
  may take place of demurrer, when defects not patent............... 2451
  may be to part of petition........... 2453
  demurrer to........................ 2455
  what answer shall contain........... 2457
  may contain several defenses, counter claims, etc......................... 2458
  requisites of counter claim.......... 2459
  costs in subsequent suits, on counter-claim.......................... 2460
  new party to counter-claim.......... 2461
  requisites of set-off................ 2462
  new party to set-off................. 2463
  compensation of cross demands 2464
  answer of guardian or attorney...... 2465
  demanding affirmative relief, pleadings of plaintiff to............... 2467
  in actions for libel and slander 2481

Section.

ANSWER—*Continued.*
  time in which it may be filed........ 2484
  to interrogatories...............2486–2488
  to amended petition 2498
  when demurrer is overruled........ 2500
  supplemental, when allowed 2506
  time for, may be extended after default.......................... 2520
  judgment upon failure to 2667
  of garnishee 2880, 2895
  in action to recover realty 2988
  in mandamus 3080
APPEAL,
  from decision of district court in county boundary line disputes.... 675
  to county commissioners in right of way proceedings................ 1329
  to supreme court in water right proceedings 1348
  to supreme court in contest of will... 3064
  in justice's court in civil actions. 3486–3503
  from justice's court, in actions for forcible entry and detainer......... 3588
  in justice's court, from decision on motion to set aside award....... 3600
  from justice's court, in criminal cases, 3653–3661
  to district court, from assessment of road damages, by county commissioners 3867
  PROBATE COURT,
    to district court—in what cases allowed...................... 2213
    time for taking—notice 2214
    affidavit on appeal................ 2215
    appeal bond...................... 2216
    effect of appeal.................. 2217
    transcript to district court........ 2218
    proceedings in district court 2219
    transcript to original court........ 2220
APPEARANCE,
  revivor by 2535
APPEARANCE DOCKET,
  duties of clerk concerning.......... 2348
APPORTIONMENT.
  in probate court, among creditors of estate..................2170, 2171
  of property of intestate............. 2229
  of school money.................... 3914
  OF COUNTY INDEBTEDNESS,
    indebtedness to be apportioned upon division of counties........... 678
    method of ascertaining indebtedness—rule of apportionment... 679
    commissioners to report to court... 680
    notice of hearing on report........ 681
    apportionment by court—order for payment by new county 682
    new county to issue warrants in payment—tax levy 683
APPRAISEMENT,
  of personalty of estate of decedent..........................2049–2055
  of realty of estate of decedent...2115, 2116
  of estates of lunatics and drunkards. 2304
  of realty in execution...........2736–3738
    2762, 2763, 2766
  in replevin........................ 3027
  in attachment in justice's court...... 3549
  of road damages 3865–3867

Section.
APPRAISEMENT—*Continued*,
of estrays 4174
of live stock condemned by veterinarian 4203
APPROPRIATIONS,
for location of university lands 3723, 3724
expenses of joint auditing committee. 4237
keeping and transportation of prisoners and juvenile delinquents 4238
compensation and contingent expenses of penitentiary commission 4239
salary of attorney general 4240
salary and commission of treasurer 4241
salary of auditor 4242
salary of veterinarian 4243
contingent expenses of various territorial officers 4244
salary and contingent expenses of geologist and mining engineer 4245
salary and mileage of stenographer 4246
salary of librarian 4247
salary of coal mine inspector 4248
contingent expenses of coal mine inspector 4249
expenses of insurance commissioner. 4250
expenses of territorial library 4251
traveling expenses of teachers 4252
contingent expenses of clerk of supreme court 4253
purchase of weights and measures 4254
expenses of messengers, to bring election returns 4255
contingent expenses of judges 4256
compensation of revision commission. 4257
application of appropriations 4258
capitol building and university building funds - how paid 4259
limitation on expenditures 4260
salary and expenses of fish commissioner 4261
hatchery house of superintendent 4262
expenses for transporting and purchasing fish 4263
blind, deaf and dumb institute 4264
aid to fair associations 4265
for printing and binding revised statutes 4276
for contingent expenses of revision commission 4283
monument and funeral expenses of William Hale 4266
erection of monument and payment of appropriation 4267
appointment of auditing committee 4268
ARBITRATION,
of right of way for ditches 1327
trial of questions of facts in civil actions, by 2362
depositions may be used in 2625
matters subject to 2949
arbitration bonds 2950
time and place of hearing 2951
process to compel attendance of witnesses 2952
disobedience of process, etc., a contempt 2953
arbitrators and witnesses shall be sworn 2954
when award shall be filed in court 2956

Section.
ARBITRATION—*Continued*.
awards shall be in writing—delivery of copy of 2955
enforcement of money award 2957
enforcement of other awards 2958
proceedings where award set aside 2959
proof required before award enforced 2960
fees and costs 2961
in justice's court 3599–3602
of expense of keeping estrays 4173
of damages by breachy animals 4185
where stock killed by order of veterinarian 4208
of claims rejected by veterinarian 4210
ARRAIGNMENT,
in district court 3270
in justice's court 3626
ARREST,
privilege from, in civil actions 2805–2809
of judgment debtor 2822
ARREST AND BAIL IN CIVIL ACTIONS,
limitation on arrest 2839
order of arrest—affidavit—causes 2840
bond must first be given 2841
when order may issue 2842
form of order 2843
when order returnable 2844
how executed—alias orders 2845
commitment of defendant 2846
discharge of defendant on deposit of money 2847
money shall be paid into court 2848
court shall control money 2849
sheriff liable for money 2850
bail, when and how taken 2851
plaintiff may object to bail 2852
notice of justification 2853
manner of justification 2854
allowance of bail 2855
sheriff's liability as bail 2856
liability of sheriff, how fixed and determined 2857
bail adjudged insufficient, liable to sheriff 2858
liability of bail, how fixed and enforced 2859
surrender of defendant discharges bail 2860
bail may arrest defendant 2861
when bail exonerated 2862
money refunded on giving bail 2863
stay of proceedings and discharge of bail 2864
order may be vacated, or bail reduced. 2865
hearing upon motion to vacate 2866
jail fees, how paid 2867
discharge of prisoner for non-payment of fees 2868
ARREST IN CRIMINAL ACTIONS,
general provisions 3178–3186
motions in, in criminal actions 3350–3353
ARSON,
defined—penalty 897
attempt to commit 898
ARTESIAN WELLS,
county commissioners authorized to sink 690
location of wells 691
advertising for proposals 692

Section
ARTESIAN WELLS—*Continued.*
  contractors shall give bond.......... 693
  pay of contractors.................... 694
ASSAULT,
  defined—penalties............ 885, 886, 987
ASSAULT AND BATTERY,
  defined—penalties............... 887, 888
  action for, shall not survive......... 2061
  limitations upon actions for......... 2372
  abatement of actions for, by death.. 2531
ASSESSOR, CITIES AND CITIES,
  duties 479
ASSESSOR, COUNTY. *See revenue.*
  when elected....................... 1083
  vacancy in office of, how filled 1175
  compensation of.................... 1191
  duty as to exempt firemen 1229
  terms and oath of office............. 1872
  bond and action thereon............ 1873
  deputy assessor—appointments, etc.. 1874
  assessor shall pay deputies.......... 1875
  shall ascertain jury qualifications of taxpayers.......................... 3378
  shall report names of blind, deaf and dumb........................ 3734
  shall return tree exemptions 3774
  shall be assisted by property owner in making assessment 3778
  may administer oaths, etc., in making assessment.................... 3878
  shall list personalty, when 3784
  shall assess corporate property, when 3787
  general duties of—return of assessment 3796
  further duties..................... 3797
  shall administer oath to persons assessed—duties upon refusal 3798
  oath of, to assessment roll 3799
  penalty for neglect of duty.......... 3800
  shall give notice of time and place of meeting of board of equalization 3802
  shall assess live stock coming into territory after time of annual assessment..................3843–3846
  penalty for neglect of duty in assessment of personalty............. 3848
  in assessing live stock shall be governed by valuation of territorial board........................ 3852
  duties in making school district assessment 3965
  shall be custodian and sealer of weights and measures.......... 4218
ASSESSMENT. *See revenue.*
  in cities and town 479
  on capital stock of corporations 509
  in certain corporations............. 572
  of stockholders in insurance corporations 631
  of damages, upon failure to answer 2667
  actions for relief against illegal..3053–3056
  of taxes when compelled by *mandamus* 3089
ASSIGNEES,
  invalid sales of realty by........... 2757
ASSIGNMENTS,
  recording of mortgage, not notice to mortgagor 22
  of mortgages on margin of record... 30
ASSIGNMENTS—*Continued.*
  does not affect right of set-off or counter claim.................. 2382
  shall not abate actions.............. 2401
  cannot affect right of counter-claim or set-off 2464
  of claim, cannot give person the right to testify................ 2589
  of property, void, when transferred after garnishment of railroad companies 2819
  OF INSOLVENT DEBTORS,
    insolvent debtors may make 92
    insolvent debtor defined 93
    foreign assignments and certain transfers not affected......... 94
    assignor may provide for any subsisting liability 95
    when void 96
    requisites of valid assignment..... 97
    what will invalidate assignment ... 98
    assignee is not a purchaser for value 99
    inventory and its requisites 100
    verification of inventory 101
    where assignment recorded and inventory filed................ 102
    where more than one assignor, where recorded, etc.......... 103
    assignment void unless recorded and inventory filed—time......... 104
    when assignment embraces realty, where recorded............. 105
    bond of assignee 106
    when assignee authorized to dispose of realty................... 107
    when assignee required to account 108
    accounting and order to distribute funds...................... 109
    failure of assignee to account—discharge and penalty.......... 110
    misconduct of assignee — removal —filling vacancy 111
    what property does not pass by assignment 112
    compensation of assignee......... 113
    assignee not liable when assignment held void.............. 114
    assignment cannot be cancelled without consent of every creditor 115
    sheriff to serve notices — fees of officers 116
    final settlement and discharge.... 117
    acceptance of dividend by creditor releases assignor............ 118
ATTACHMENT,
  in *habeas corpus* proceedings....1289, 1290
  for compelling delivery of effects into probate court............. 2048
  of person for abandoning child...... 2285
  answers to interrogatories may be enforced by.................... 2488
  against witness................2601–2604
  of corporate stock.................. 2772
  exemptions from..............2780–2791
  of person in garnishment against railroad companies............. 2816
  when judgments may be enforced by. 2838
  causes of attachment, in civil actions.......................... 2869

Section

ATTACHMENT—*Continued.*
in justice's court, for witnesses...... 3453
to enforce allowance of appeal from justice's court.................. 3498
in justice's court 3541–3573
How Obtained,
affidavit for attachment........... 2870
undertaking required.............. 2871
order of attachment—form......... 2872
several orders may be issued....... 2873
orders, when returnable........... 2874
Execution and Return of,
order of executing different attachments....................... 2875
manner of execution.............. 2876
forthcoming bond—custody of property 2877
affidavit for garnishment—service.. 2878
garnishment of public officers..... 2879
answer and examination of garnishee...................... 2880
transmission of answer of garnishee...................... 2881
garnishee, how served............. 2882
different attachments on same property......................... 2883
subseqent attachments, how levied. 2884
return of officer.................. 2885
when property and garnishee bound 2886
Disposition of Attached Property,
appointment of receiver........... 2887
duties and powers of receiver..... 2888
notice of appointment............. 2889
report of receiver................ 2890
attaching officer may act as receiver....................... 2891
disposition of attached property... 2892
Proceedings upon Attachment,
attachment may be discharged by undertaking.................. 2893
undertaking may be given in vacation......................... 2894
appearance and answer of garnishee 2895
payment of money by garnishee... 2896
attachment of garnishee for contempt 2897
disposition of property in hands of garnishee................... 2898
action against garnishee.......... 2899
costs in such action, and substitution of parties............... 2900
judgment against, and discharge of garnishee 2901
attachment discharged, on judgment for defendant........... 2902
sale of attached property to satisfy judgment 2903
court may compel delivery of property 2904
court may order sheriff to repossess himself.............. 2905
claims of third persons to attached property 2906
reference of questions of priority... 2907
General Provisions,
jurisdiction, when obtained—no abatement 2908

Section

ATTACHMENT—General Provisions—*Continued.*
further security, when required of plaintiff 2909
motion to discharge attachment... 2910
evidence upon motions to discharge....................... 2911
Before Debt Due,
grounds of...................... 2912
granted by court—affidavit........ 2913
when refused, action dismissed.... 2914
order of, must specify amount..... 2915
undertaking required............. 2916
action continued until claim is due. 2917
general application of attachment law to...................... 2918
ATTEMPT,
to commence action, equivalent to commencement 2377
ATTORNEY GENERAL,
duty in condemnation proceedings by territory 499
duties relating to insurance corporations.......................603, 630
bribery of—penalties................ 940
appointment and qualifications...... 1679
term of office........................ 1680
bond 1681
vacancy in office—how filled......... 1682
general duties...................... 1683
further duties—official report........ 1684
compensation....................... 1685
may verify pleadings when territory a party........................ 2489
shall commence *quo warranto* proceedings, when................ 3094
ATTORNEYS-AT-LAW,
attorneys heretofore permitted to practice, may continue.......... 119
qualifications for admission to district court 120
admission to supreme court......... 121
admission of foreign attorneys......122, 123
effect of admission to supreme court. 124
form of oath....................... 125
attorney cannot be surety on bond... 125
license of attorney may be revoked or suspended.................. 126
causes of revocation or suspension... 127
penalty for deceit or collusion....... 128
commencement of proceedings to disbar.......................... 129
notice to accused................... 130
pleadings by accused—trial.......... 131
judgment on plea of guilty or failure to answer..................... 132
proceedings where offense not committed in presence of court...... 133
where action is for slander of court, accused may prove truth of charge 134
judgment if found guilty............ 135
appeal to supreme court............ 136
attorney may be required to show authority 137
attorney's lien..................... 138
embezzlement by attorney—penalty. 139
money and property may be justly retained as fees................ 140
fees for defending pauper prisoners.. 141
penalty for barratry................ 963

Section
ATTORNEYS-AT-LAW—*Continued.*
answer by, for prisoner............. 2465
may subscribe and verify pleadings.. 2489, 2496
privileged communications of....... 2589
depositions cannot be before, when.. 2619
shall have warrant to confess judgment 2671
attending court, privileged from arrest in civil actions 2805
when, may bring *quo warranto* proceedings 3097
assignment of, for defense of indigent prisoners 3259
need not be jurors.................... 3376
justice shall not have office with..... 3419
when territorial treasurer may employ 3837
may be employed by school officers.. 3975
ATTORNEY, PROSECUTING. *See Prosecuting Attorney.*
AUCTIONEERS,
shall pay license—amount.......1439, 1452
AUDITOR, TERRITORIAL,
shall draw warrant in favor fair associations, when.................. 579
effect of certified copy by, of bond of clerks of district courts.......... 852
shall be a member of territorial canvassing board 1131
shall draw warrants for payment of stenographer.................. 1760
shall draw warrants to pay for care of juvenile delinquents 2334
authorities and duties in issuing and paying capitol building and university bonds 3673–3692
shall issue warrants for university income 3716
shall keep certain accounts with blind, deaf and dumb institute......... 3735
duties respecting insane asylum bonds 3748–3753
shall be a member of territorial board of equalization 3804, 3849
duties as member of territorial board of equalization 3805
shall certify to county clerks the assessment of railway and telegraph lines 3839
shall furnish board for valuation of live stock, with abstract of previous year 3851
shall issue warrants for expenses of teachers' institute..........3910, 3912
shall issue warrants for stock indemnity, when..................... 4208
shall draw warrant for payment for printing and binding revised statutes 4276
shall pay no claims when rejected by veterinarian—exceptions 4210
shall draw warrants for members and clerks of revision commission 4277, 4279
AUDITOR AND TREASURER,
appointment—term of office—oath—filling vacancy—deputies.... 1686
bonds of officers and deputies...... 1687
qualifications of sureties 1688
approving and filing of bonds..... 1689

Section
AUDITOR, TERRITORIAL—AUDITOR AND TREASURER—*Continued.*
bonds to be given before entering on duties...................... 1690
official seals......................... 1691
contingent expenses.................. 1692
general duties of auditor........... 1693
auditor to report to legislature..... 1694
enumerated duties of auditor...... 1695
enumerated duties of treasurer.... 1696
treasurer to grant duplicate receipts 1697
collectors of revenue to exhibit accounts to auditor........... 1698
collectors to make payment in ten days......................... 1699
warrant of distress against delinquents...................... 1700
sheriff to collect by distress and sale 1701
manner of making sale 1702
mileage of sheriff................. 1703
time for exhibiting claims against territory 1704
set-offs in suits by territory........ 1705
auditor may take evidence concerning claims.................... 1706
preservation of records by auditor. 1707
claims, etc., to be paid by auditor's warrants..................... 1708
warrants not to be issued in absence of appropriations............ 1709
appeal from auditor to legislature.. 1710
when claim to be audited in absence of appropriation.......... 1711
auditor to report defaulting officers. 1712
defaulters to be advertised........ 1713
access to public books and accounts 1714
letter books...................... 1715
issuing unauthorized warrant—penalty 1716
refusal to pay lawful warrants—penalty.................... 1717
malfeasance of auditor and treasurer—penalty 1718
when territory has lien on realty of debtor...................... 1719
committee to settle with auditor and treasurer—oath 1720
duties of committee 1721
legislative committee—time of examining accounts—reports.... 1722
final settlement of accounts....... 1723
certificate....................... 1724
duplicate certificates shall be given if legislature not in session.... 1725
action on settlement by legislature. 1726
compensation of auditing committee 1728
auditor and treasurer may administer oaths 1729
compensation of auditor and treasurer 1730
fiscal year—balancing accounts—succession in office 1731
when officer shall balance accounts and make reports 1732
warrants not to exceed appropriation—claims to be itemized and verified....................... 1733
funds shall be paid only on warrants 1734

Section

AUDITOR, TERRITORIAL—*Contd.*

compensation of *pro tempore* officers 1727

penalty for drawing warrants to exceed appropriation and for paying money out of territorial treasury without warrants.... 1735

AUTHENTICATION,

of depositions 2627

of revised statutes.................. 4285

AWARD. *See arbitration.*

BADGERS,

bounty for destruction of........... 4235

BAIL, IN CIVIL ACTIONS. *See arrest and bail.*

in *habeas corpus* proceedings......... 1302

BAIL, IN CRIMINAL ACTIONS,

general provisions..............3199, 3220

plaintiff may sue upon, in justice's court 3512

in appeal from justice's court, in criminal cases..................3656–3657

BAILEE,

larceny by........................ 917

BANKING ASSOCIATIONS,

injunction in aid of *quo warranto* proceedings against.............3118, 3120

BANKS,

assessment of national bank stock....3789

assessment of bank notes............ 3791

must have weights sealed—penalty... 4128, 4129

BAR,

action barred elsewhere, barred here. 2379

BAR DOCKET,

clerk shall prepare.................. 2523

BARRATRY,

defined—penalty 963

BARRY, LEAVITT C.,

legalization of acts as deputy notary public and deputy recorder of Carter County 66

BATTERY. *See assault and battery.*

BEAR,

bounty for destruction of 4234

BENEVOLENT SOCIETIES,

may incorporate.................... 566

limitation upon property rights...... 568

officers shall receive no salary....... 574

property of, exempt from taxation... 3771

BEQUESTS. *See wills.*

BETTING,

disqualifies elector from voting...... 1104

BIGAMY,

defined........................988, 990

BILLS OF EXCEPTION,

referees shall sign.................. 2579

when necessary—signing and filing.. 2649

in justice's court, in civil actions 3473, 3486

BILLS OF EXCHANGE,

drawers of, cannot be summoned from another county 2425

abbreviated pleadings upon 2473

BILLS OF SALE,

must be given on sale of all live stock 4125

of impounded goats and swine 4166

BLACKMAILING,

defined—penalties 894–896

BLAKE, J. W.,

legalization of acts of as notary public 67

Section

BLIND, DEAF AND DUMB INSTITUTE,

creation of institute, located at Cheyenne—limitation 3725

board of trustees 3726

organization of board................ 3727

oath of trustees—duties of president and secretary 3728

powers of trustees................... 3729

expenses shall be confined to appropriation....................... 3730

payment of expenses—compensation of trustees 3731

inmates, not residents of territory... 3732

who admitted to institute 3733

assessor shall report names of afflicted 3734

pupils shall be properly clothed—payment of expenses.............. 3735

officers and their duties............. 3736

duties of matron.................... 3737

president of board, shall make annual report to governor.............. 3738

BOARD,

penalty for obtaining by false representations...................... 1039

BOARD OF EQUALIZATION,

for uniform valuation of live stock. 3851–3853

BOARD OF EQUALIZATION, COUNTY.

duty of assessing insurance companies 3788

when county commissioners shall sit as 3801

when shall sit to hear grievances.... 3802

equalization of school taxes.......... 3966

BOARD OF EQUALIZATION, TERRITORIAL,

duties in making assessment to pay insane asylum bonds........3754, 3735

of whom it shall consist—time of meeting....................3804, 3839

hearing of complaints in assessment of railway and telegraph lines.... 3840

shall levy special tax to pay stock indemnity 4213

BONA FIDE PURCHASERS.

not affected by liens upon personalty. 1485

not affected by opening of judgment. 2703

of realty on execution.............. 2756

BONA FIDE RESIDENTS,

entitled to exemptions.............. 2790

BONDS,

of assignee......................... 106

issue by railroad companies...... 549–554

of contractors of artesian wells....... 693

of contractor building Carbon County court house.................... 699

of contractors Fremont County court house 720

of contractors of Crook County court house.................... 741

of contractors of Johnson County court house...................... 767

of contractors of county jails........ 1383

co-executors shall give............. 1991

of administrator..........1997, 2013, 2017

of executor..............1999, 2013–2017

in administration of partnership estates 2032

executors may give joint or separate. 2035

Section
BONDS—*Continued.*
action upon, of executor or administrator, for waste 2208
on appeal from probate court 2216
of sole legatee 2239
of executors, with the will annexed .. 2240
of guardians of property of minor ... 2255
additional bonds of guardian of property 2263
action on guardian's bond 2267
of foreign guardians of property of minor 2272
of guardians of lunatics and drunkards 2295–2297
justification of sureties upon 2342
qualification of surety, upon 2343
parties to action, upon 2383
sureties to, may be made parties to actions upon, when 2718
officers shall take, in execution upon delivery of goods to defendant ... 2731
to obtain privilege of prison bounds .. 2811
when forthcoming, in attachments ... 2877
in arrest, in civil actions 2841
in arbitration 2950
bail 3220
of contractor of insane asylum 3743
of contractors of capitol building 3772
of foremen of round-ups 4112
BONDS, MUNICIPAL,
Cheyenne water bonds 175–185
Cheyenne funding bonds 186–193
Cheyenne filter bed bonds 194–202
Laramie sewerage bonds 259–269
Cheyenne, power to issue bonds—limitations, par. 27 161
Laramie City, of, bonds, limitation, par. 28 222
Carbon County court house 695–716
Fremont County court house 717–736
Crook County court house bonds .. 737–757
Johnson County court house 763–784
Uinta County jail bonds 785–799
Uinta County funding bonds 800–814
Uinta County hospital bonds 815–822
Albany County, district No. 1, (1882) 3983–3994
Albany County, district No. 1, (1886) 3995–4006
Carbon County, district No. 3, (1886) 4007–4019
Johnson County, district No. 1, (1884) 4020–4033
Uinta County, district No. 1, (1884) 4034–4046
Uinta County, district No. 1, (1886) 4047–4055
Uinta County, district No. 6, (1884) 4056–4066
BONDS, OFFICIAL,
Cheyenne, bonds of deputy treasurer 171
Cheyenne, special bond of treasurer 182 191, 200
Laramie, City of, special bond of treasurer 268
Evanston, bonds of officers 291
Sheridan, bonds of officers 352
special, of Carbon County treasurer. 713
special, of treasurer Fremont County 733
special, of treasurer Crook County... 753

Section
BONDS, OFFICIAL—*Continued.*
special, treasurer Johnson County... 781
special, of treasurer of Uinta County. 795
special, of treasurer Uinta County... 811
of clerk of supreme court 835
of clerks of district courts 850
of territorial inspector of coal mines. 1648
of notaries public 1663
action upon, of notaries public 1669
of attorney general 1681
of territorial auditor and treasurer 1687–1690
of territorial librarian 1749
of county commissioners 1799
of probate judge 1820
of county treasurer 1821
of county clerk and *ex-officio* register of deeds 1840
of sheriff 1858
of assessor 1873
of coroner 1876
of county surveyors 1889
of county and prosecuting attorney.. 1893
of superintendent of schools 1898
of justices of the peace and constables 1899
every officer shall give 1902
shall be made payable to territory.... 1907
of revenue officers 1910
new, may be required 1911
officer filling vacancy shall give 1914
limitations upon actions upon 2373
county may sue in corporate name upon 2383
venue of actions upon 2414
of master commissioners 2583
of territorial treasurer, for care of capitol building and university building funds 3691
of treasurer of university 3612
separate of territorial treasurer, for custody of insane asylum building funds 3758
of school district treasurer 3945
treasurer of Albany County, separate 3991–4003
of construction committee, Carbon County, school district No. 3..... 4019
of treasurer of Johnson County, separate 4032
of construction committee, Uinta County, school district No. 1 4046
Uinta county treasurer, separate 4065
of sheep inspector 4149
of territorial veterinarian 4211
BONDS, TERRITORIAL.
for capitol building 3673
for university building 3679
for insane asylum 3746–3755, 3759
BOOMS,
restrictions upon construction of .. 3900, 3900
BOUNDARIES OF COUNTIES. *See titles of the several counties.*
when disputed to be surveyed by county surveyors 670
reports of surveyors whey they agree 671
reports of surveyors when they disagree 672
application of court for settlement of —notice 673
when court obtains jurisdiction 674

Section
BOUNDARIES OF COUNTIES—*Continued.*
settlement of boundaries—appeal.... 675
application to court when survey has not been made 676
expenses and costs of adjusting, how paid 677
change of county—effect on school districts 3978
BRANDS,
penalty for altering 907
general provisions concerning...4094-4106
4011
branding mavericks 4111-4115
BRIBERY,
defined penalties 939-941
penalty for bribing electors 1031
BRIDGES. *See roads and highways.*
BRIDGE COMPANIES,
may incorporate—rights and duties, 538-540
BUFFALO, CITY OF,
corporate limits and name........... 318
general corporate powers............ 319
by whom powers exercised.......... 320
police justice—jurisdiction.......... 321
mayor and trustees—term of office—qualifications 322
annual elections.................... 322
qualifications of electors............ 323
regular meetings of trustees......... 324
duties of mayor—casting vote....... 325
appointive officers.................. 326
mayor to sign warrants, drafts and deeds.......... 327
approval and veto of mayor—advisory powers.................. 328
special meetings of trustees......... 329
officers shall exhibit accounts, etc., to mayor 330
vacancy in office of mayor, how filled 331
mayor may remit fines and grant pardons 332
quorum of trustees—appropriating money 333
general powers of mayor and trustees 334
enumeration of specific corporate powers 335
employment of an attorney.......... 336
disposition of fines collected......... 337
fees of police justice................ 338
punishment by fine and imprisonment 339
appeals from police court to district court 340
contempt in police court............ 341
powers of marshal.................. 342
power of policemen................. 343
policemen, to whom subject......... 344
trustees' control of officers.......... 345
compensation of mayor and trustees. 346
misbehavior, of officers—penalty..... 347
site of court house 763
BULLS,
restrictions on, running at large in Albany County.............4136-4139
BURGLARY,
defined 899
BUTCHERS,
Section
restrictions upon purchasing and slaughtering cattle, and selling hides 4126-4130
CAPITAL PUNISHMENT. *See death penalty.*
CAPITOL, BUILDING AND UNIVERSITY,
capitol building shall be erected at Cheyenne—cost.................. 3665
capitol building commission—appointment, etc 3666
organization of commission, rules and regulations—record 3667
selection of site for building 3668
plans and specifications............. 3669
authority to contract for construction 3670
advertisement for bids—awarding contract 3671
contractors shall give bonds 3672
capitol building bonds 3673
compensation of commissioners 3674
authority to erect university building 3675
university building commission—appointments, etc................. 3676
selection of site for university....... 3677
powers and duties of commission.... 3678
authority to issue building bonds.... 3679
terms of bonds..................... 3680
execution and registration of bonds.. 3681
interest coupons 3682
preparation and sale of bonds 3683
bonds shall be executed on written request 3684
issuance of bonds—custody and disbursement of funds............ 3685
manner of issuing warrants 3686
annual tax levy to pay interest...... 3687
redemption of bonds, and tax levy, for same...................... 3688
manner of levying and collecting tax 3689
compensation of territorial treasurer. 3690
separate bond required of treasurer.. 3691
time and place of paying bonds 3692
restrictions upon members of the commissions 3693
time for completion of buildings..... 3694
commissions shall keep accounts and make reports 3695
compensation of university commission 3696
construction of law relating to 3697
supreme court shall meet at......... 823
located at Cheyenne................ 4068
UNIVERSITY REGULATIONS,
creation and location of university. 3698
objects of university............... 3699
board of trustees 3700
trustees may incorporate 3701
terms of office of trustees 3702
appointment of trustees............ 3703
vacancies in board of trustees..... 3704
quorum and meetings of trustees.. 3705
powers of board of trustees........ 3706
faculty of university—its powers .. 3707
members of faculty cannot be trustees 3708
university shall not be sectarian... 3709
tuition for certain students shall be free 3710

Section
CAPITOL BUILDING AND UNIVERSITY — UNIVERSITY REGULATIONS—*Continued.*
  application of donations 3711
  treasurer's bond 3712
  duties of secretary of board 3713
  duties of treasurer of board 3714
  board of visitors 3715
  university income tax 3716
  plans, etc., of university, shall be approved by trustees 3717
  time of opening university 3718
CARBON COUNTY,
  certain license money payable to the City of Rawlins 431
  transfer of certain property of, to the of Rawlins 444
  cannot aid railroad companies 565
  boundaries of 659
  county seat of 660
  school district No. 2, abolished 3979
  school district on Fort Steele military reservation prohibited 3980
  school district No. 3, bonds, (1886). 4007–4019
  restrictions on bulls running at large, in 4139
  lawful fence in 4182
  COURT HOUSE BONDS,
    site for court house and jail 695
    plans and specifications 696
    advertising for proposals 697
    award of contract 698
    contractor shall give bond 699
    authority to issue 700
    terms of 701
    registration of 702
    coupons—payment 703
    annual bond tax 704
    use of bond tax 705
    retirement of bonds 706
    time and place of payment 707
    notice of intended payment 708
    interest shall cease when 709
    security for payment of 710
    preparation and sale of 711
    custody of funds—treasurer's commission 712
    treasurer shall give separate bond 713
    expenses to be paid out of general fund 714
    construction of bonding statute 715
    sale of present jail site 716
CARTER COUNTY,
  legalization of certain official acts ... 65, 66
CASE,
  action on the, shall not survive 2061
CASES,
  order in which tried 2521
CATTLE. *See stock, live.*
CAUSES OF ACTION,
  shall be separately stated in petition. 2448
CEMETERIES,
  incorporation of companies to control 566
  limitation on property rights 568
  officers of, shall receive no salaries ... 574
  exempt from taxation 3771
CERTIFICATE,
  of corporations 501
  to depositions 2628

Section
CERTIFICATE—*Continued.*
  of special partnership 4071–4076
CERTIORARI,
  writs of, abolished 3149
CHALLENGE,
  at elections—rights of 1112, 1117
  of jurors 2550, 2551
  to jurors, in criminal actions 3280–3285
  in justice's court, in criminal cases ... 3636
CHANCERY. *See action, form of.*
CHANGE OF VENUE,
  when corporation is a party 2421
  in district court—general provisions. 3400–3409
CHATTELS. *See personalty.*
CHATTEL MORTGAGES. *See mortgages, chattel.*
CHEYENNE, CITY OF,
  corporate limits and name 142
  general corporate powers 143
  powers exercised by mayor and council 144
  division of city into wards 145
  police justices—appointment and jurisdiction 146
  mayor and councilmen—qualifications 147
  annual elections 147
  qualifications of electors—paying poll tax 148
  regular meetings of council 149
  duties of mayor—his casting vote 150
  city officers—appointment—term of office and removal 151
  mayor to sign orders, drafts and deeds 152
  approval and veto of mayor 153
  advisory powers of mayor 154
  special meetings of council, how called 155
  officers shall exhibit accounts, etc., to mayor 156
  jurisdiction of mayor 157
  vacancy in office of mayor—new election 158
  mayor may remit fines and grant pardons 159
  general powers of mayor and council 160
  enumeration of specific corporate powers 161
  disposition of fines 162
  fees of police justices 163
  punishment by fine and imprisonment 164
  appeal from police justice to district court 165
  police justices may punish for contempt 166
  marshal's power as chief of police ... 167
  powers as policemen 168
  policemen subject to orders of mayor and marshal 169
  marshal subject to orders of mayor ... 170
  duties of officers 171
  deputy clerk and deputy treasurer ... 171
  compensation of officers 172
  malfeasance of officer—penalty 173
  removal of mayor 173
  official year 174
  city is legal successor of former municipal government 174
  county seat of Laramie County 666

Section
CHEYENNE, CITY OF—*Continued.*
authority to grant exclusive right to mantain water works........... 175
shall be site of capitol building..3665–3668
blind, deaf and dumb institute located at.............................. 3725
seat of government of territory...... 4068
WATER WORKS BONDS,
authority to issue bonds for water works 176
registration of bonds.............. 177
security for payment of bonds..... 178
redemption of bonds............. 179
cancellation of coupons and bonds. 180
when bonds not to be issued....... 181
custody of funds—bond of treasurer........................ 182
protection of water works......... 183
application of water rents......... 183
penal provisions relating to water bonds........................ 184
power to enact water ordinances... 185
FUNDING BONDS,
authority to issue funding bonds... 186
registration of bonds.............. 187
security for payment of bonds...... 188
redemption of bonds.............. 189
cancellation of coupons and bonds. 190
custody of funds—bond of treasurer 191
application of water rents......... 192
application of surplus from sale of bonds 193
FILTER BED BONDS,
authority to construct filter beds... 194
authority to issue bonds.......... 195
registration of bonds.............. 196
pledge of taxable property......... 197
redemption of bonds.............. 198
cancellation of coupons and bonds. 199
custody of funds bond of treasurer 200
penal provisions.................. 201
authority to enact ordinances relative to filter bed bonds......... 202
CHILDREN. *See minors.*
who can testify.................... 2588
CHIEF JUSTICE,
may administer oaths.............. 3412
CHRISTMAS DAY,
a legal holiday.................... 1430
CHURCH PEWS,
conveyances of may be recorded..... 19
CHURCHES. *See religious societies.*
CITATION, PROBATE COURTS,
of person entitled to administration.. 1989
of executors and administrators to make settlement.......... 2025, 2026
of surviving partner for refusal to exhibit 2034
of persons concealing estate......... 2045
of delinquent executors, etc......2164, 2165
of surety of executors, etc.......... 2173
of children, to determine advancements............................ 2224
CITIES AND TOWNS,
Cheyenne charter 142–174
Cheyenne water supply..........175–185
Cheyenne funding bonds..........186–193
Cheyenne filter bed bonds.. 194–202

Section
CITIES AND TOWNS—*Continued.*
Laramie charter.................203–255
Laramie water works.............256–258
Laramie sewerage................259–269
Evanston charter................270–317
Buffalo charter.................318–347
Sheridan charter 348–410
Rawlins charter.................411–444
general incorporation of towns....445–497
condemnation proceedings by....... 500
may regulate nuisances............ 1024
duties of chief of fire department, as to exempt firemen............. 1228
clerks of, duties as to exempt firemen.....................1230, 1232
disposal of public town site lands.1388–1399
plating and dedicating town sites.1400, 1413
payment of certain license money in Laramie County to City of Cheyenne.......................... 1438
may control gambling............. 1465
separate abstracts of lots of, shall be kept in office of register of deeds. 1853
swine and goats shall not run at large in 4164
shall have public scales.........4230, 4232
CIVIL ACTION,
the only form of action............ 2360
jurisdiction in, obtained by service or appearance 2422–2443
how commenced 2423
CIVIL CODE. *See procedure, civil.*
GENERAL PROVISIONS AS TO APPLICATION OF,
appeal of pending cases in chancery, not affected............. 3152
pending actions—existing and.... future causes of action........ 3153
application to certain special proceedings..................... 3154
application to certain statutory actions......................... 3155
CIVIL PROCEDURE. *See procedure civil.*
CIVIL PROCESS. *See process, civil.*
CIVIL REMEDY. *See action right of.*
CLAIMS.
against territory, when and how made. 1704
against county, how presented....... 1805
CLERGYMEN,
may solemnize marriages—duties.... 1548, 1553
privileged communications of........ 2589
CLERK, COUNTY. *See offenses against public justice.*
may take acknowledgments......... 8
shall record affidavit of renewal of chattel mortgage............... 75
shall record certificates of incorporation........................... 501
duties in issuing bonds to railroads... 556
shall give notice of special elections.. 1095
duty of, when vacancy in legislature. 1173
when elected....................... 1083
vacancy in office of, how filled....... 1175
duties in receiving election returns and canvassing same........1125–1129
duties regarding exempt firemen.. 1227, 1232
duties in platting and dedigating town sites 1408–1411

Section

CLERK, COUNTY—*Continued.*
- salary and fees of 1184
- shall make requisition for and distribute laws................1424, 1425
- duties in issuance and record of county licenses 1434, 1435
- shall record mining liens 1489
- duties in issuing marriage licenses and recording certificates....... 1546–1552, 1555
- shall keep lists of commissioners of deeds......................... 1678
- shall attest county warrants 1807
- shall give notice to attorney of appeal from commissioners............ 1809
- term of office—shall be *ex-officio* register of deeds—oath and bond 1840
- deputy clerk—appointment, etc...... 1841
- general duties of clerk.............. 1842
- duties in recording proceedings of commissioners 1843
- duties in filing accounts and issuing warrants 1844
- shall keep office at county seat 1901
- duty, when pauper comes from another county 1957
- property of, may be sold on execution without valuation 2739
- duty in drawing jurors 3382–3388
- may administer oaths 3412
- shall transmit list of blind, deaf and dumb to institute............... 3734
- shall send abstract of assessment roll to auditor...................... 3803
- duties in making of tax list......3805–3807
- when, shall levy tax, on personalty.. 3846
- shall furnish assessor with valuations of live stock, as furnished by board 3852
- duties in listing school taxes......... 3966
- shall record brands 4094
- shall not record same brand twice... 4095, 4098
- shall be member brand committee... 4103
- shall file all brands................. 4103
- shall record description of estray..... 4171
- shall give certificate of destruction of wild animals...............4234, 4235
- shall distribute revised statutes...... 4281
- Ex-Officio Register of Deeds,
  - duties as register of deeds.......... 1845
  - indexes to be kept by register 1846
  - receiving book.................... 1847
  - certified copies of evidence........ 1848
  - abstract books to be kept in each county.......................... 1849
  - abstract of existing transfers and liens 1850
  - clerk to abstract conveyances, etc. —fees.......................... 1851
  - form of abstract books............ 1852
  - separate abstract of town lots...... 1853
  - abstract books shall be public...... 1854
  - Sweetwater County abstracts...... 1855
  - Sweetwater County abstracts to be perfected.................... 1856
  - restoring lost records in Sweetwater County...................... 1857

CLERK OF COURT,
- duties regarding United States commissioners 10

CLERK OF COURT—*Continued.*
- may take acknowledgments......... 8, 9
- shall give notice in county boundary line disputes.................... 673
- may adjourn court in absence of judge 845
- may appoint deputy................ 847
- may appoint several deputies in his own county.................... 848
- shall issue writ of *habeas corpus*...... 1271
- shall index water right statements.... 1341
- shall issue notice of trial of rights to water.......................... 1346
- duty in settlement of adverse claims, on town sites.................. 1392
- shall notify penitentiary commissioners of sentence of convicts—description of convicts.......786, 1787
- shall certify transcripts to probate court....................... 2220
- shall sign process.................. 2344
- shall keep dockets.................. 2347
- shall make entries on appearance docket—shall make index...... 2348
- shall issue all writs and process..... 2349
- shall file and preserve papers....... 2350
- shall indorse papers................ 2351
- shall keep books and make records.. 2352
- shall record orders out of court...... 2353
- provisions applicable to all.......... 2354
- general duties of................... 2355
- shall issue summons............... 2424
- shall mail copy of summons to defendant in constructive service... 2435
- shall prepare trial docket........... 2519
- shall place actions maturing during term on trial docket, when....... 2522
- shall prepare bar docket 2523
- duty on return of verdict of jury..... 2561
- shall enter special and general verdict 2564
- shall enter verdict.................. 2673
- duty in making record..........2679–2685
- shall make index to judgments...... 2686
- shall enter judgment of justice upon execution docket............... 2724
- shall issue execution, against surety.. 2765
- shall pay jury fees deposited into county treasury................ 2567
- shall issue subpœna................ 2594
- depositions may be taken before..... 2617
- may make record of dismissal....... 2661
- shall keep execution docket......... 2769
- shall keep index to execution docket. 2770
- shall enter order of sale on execution docket 2771
- attending court, privileged from arrest in civil action................. 2805
- shall issue notice of garnishment against railroad companies...... 2813
- amercement of..................... 2944
- shall issue subpœna for witnesses before arbitrators................. 2952
- shall assist in drawing jury for trial concerning occupying claimants. 2994
- shall issue order of replevin........ 3021
- shall issue writ of *mandamus*........ 3079
- shall make record of recognizance... 3203
- shall make list of persons committed or bailed....................... 3221
- shall issue process for witnesses in criminal actions............... 3289

Section
CLERK OF COURT—*Continued.*
may issue warrant for escaped felon. 3326
shall send copy of sentences to auditor 3346
shall issue order for summoning jurors 3389
shall draw petit jury 3396
shall make transcript upon change of venue in criminal actions 3406
may administer oaths 3412
fees for docketing civil cases on appeal from justices' courts 3486
shall docket appeals from justice's court 3491
CLERK OF SUPREME COURT,
shall publish synopsis of opinions 829
how appointed—oath and bond 835
deputy—appointment and oath 836
deputy, when appointed—record 837
clerk liable for acts of deputy 838
CLOTHING,
exemptions of 2787
CLOUDS FROM TITLE,
certain deeds executed before one witness legalized 56, 61, 64, 59
certain conveyances executed without proper certificate legalized 57
mining records in Shoshone and California districts legalized 58
acknowledgments before clerks of courts legalized 60
conveyance without the word "heirs" deemed to convey fee simple 62
certain conveyances acknowledged before notary outside of territory legalized 63
acts of A. G. Turner as register of deeds of Carter County legalized 65
acts of Leavitt C. Barry as deputy notary public and deputy recorder of Carter County legalized 66
acts of J. W. Blake as notary public in Albany County legalized 67
acts of Samuel Rosendale as notary public in Laramie County legalized 68
certain conveyances with defective acknowledgments legalized 69
COAL MINES. *See mines and mining.*
lode and placer mining law does not apply to 1639
CODE, CIVIL. *See procedure, civil.*
CODE, CRIMINAL. *See criminal code.*
CODICIL. *See wills.*
COLLECTOR OF TAXES,
property of, may be sold under execution without valuation 2739
general duties 3769-3848
payment of school tax by 3968
COLLEGES. *See university.*
societies to maintain may incorporate 566
powers of trustees 576
officers shall receive no salaries 574
COLORED CHILDREN,
separate schools for 3947
COMMENCEMENT OF ACTIONS,
when deemed commenced 2376
attempt equivalent to 2377
of civil action 2422
COMMISSIONS,
in justice's court, to take evidence outside of territory 3459, 3460

Section
COMMISSION MERCHANTS,
shall list property for assessment 3783
COMMISSIONERS,
to make partition of realty—duties 2965, 2967
to locate university lands 3719-3724
COMMISSIONER, FISH. *See fish.*
COMMISSIONERS, COUNTY,
duties in issuing bonds to railroad companies 555-565
duties when boundary lines of county in dispute 670-677
of new counties, duty in apportionment of indebtedness 679-683
duties relative to county libraries, 684-689
authorized to sink artesian wells—duties 690-694
may request special term of district court 843
shall call special elections 1093, 1095
duties regarding general elections 1096, 1098
when elected 1083
vacancy in office of, how filled 1175
compensation of 1195
shall appropriate money for culture of fish—shall appoint county fish commissioner 1246
duties in right of way proceedings, for ditches 1320
shall bridge ditches 1326
shall provide index for water rights 1341
duties respecting jails 1366-1385
duties in platting town sites 1411
shall destroy unpaid licenses 1451
enumerated powers of counties 1791
county property 1792
powers of county exercised by commissioners 1793
county buildings 1794
name in which county shall sue and be sued 1795
service of process against counties 1796
restrictions upon employment of attorneys 1797
judgment against county to be paid by tax levy 1798
commissioners—term of office—oath—bond—quorum 1799
regular and special meetings 1800
enumerated powers of commissioners 1801
county seal—meetings to be public 1802
selection of chairman 1803
commissioners may administer oaths 1804
claims against county to be itemized and verified 1805
penalty for improper allowance of claims 1806
attestation of county orders 1807
appeal on disallowance of claim 1808
notice of appeal to county attorney 1809
county officers shall be provided with stationery, etc 1810
publication of semi-annual statements 1811
penalty for neglect of duty 1812
term of appointed commissioner 1813
publication of commissioners proceedings 1814
delinquent tax list shall be published 1815
notice of election shall be published 1816

Section

COMMISSIONERS, COUNTY—*Continued.*
official county paper................ 1817
legal advertising, shall be set in solid brevier type.................... 1818
rates of advertising prescribed...... 1819
shall approve bonds of probate judge and treasurer..............1820, 1821
shall approve bond of county clerk.. 1840
shall provide abstract books......... 1849
shall approve bond of sheriff......... 1858
may appoint special deputy sheriffs.. 1863
shall approve bond of coroner........ 1876
shall approve bond of county attorney 1893
may employ attorneys............. 1894
shall approve bond of superintendent of schools...................... 1898
may require bonds of revenue officers 1910
may require new official bonds...... 1911
may declare office vacant if bond not given......................... 1913
may abate nuisances................ 1924
shall locate place for storage of explosives 1950
shall have superintendence and care of poor and paupers 1953–1965
shall provide for burial of indigent veterans 1966–1968
shall provide furniture for probate court.......................... 1975
shall call special election for probate judge, when.................... 1979
authority concerning abandoned and orphan children................ 2282
shall commence action for abandonment......................... 2285
duties when sureties of officers asked to be discharged..........3042–3049
shall destroy counterfeit coin........ 3175
duties in selecting jurors........3379–3380
may administer oaths........... ... 3412
shall pay for care of indigent blind, deaf and dumb children......... 3735
shall have general control of roads and highways..............3859–3899
appeal to, from county superintendent in forming new school district... 3919
shall approve bond of school district treasurer 3945
shall levy tax for school purposes.3964–3966
shall place indigent insane persons in insane asylum................. 3765
shall levy poll tax..............2768, 3769
shall make schedule of lands entered under United States laws........ 3776
shall furnish assessor with assessment roll............................ 3795
shall sit as board of equalization—duties.................... 3801, 3802
shall refund taxes erroneously paid.. 3821
shall make special tax levy to pay delinquent territorial taxes...... 3837
duties, upon equalization of taxes of railway and telegraph lines by territorial board of equalization.. 3839, 3841
chairman of board of, of each county shall constitute territorial board of equalization to fix uniform value of live stock............. 3851

COMMISSIONERS, COUNTY—*Continued.*
shall equalize assessment of personalty............................ 3846
disposal of fines, etc., collected—school fund.................... 3976
duties as brand committee.......4103–4105
may offer rewards, for detection of violators of stock laws.......... 4143
may remove sheep inspector......... 4157
shall provide standard weights and measures 4216, 4217, 4225
authorized to encourage destruction of wild animals.............4234–4236

COMMISSIONERS, MASTER. *See master commissioners.*

COMMISSIONER OF DEEDS,
may take acknowledgement outside of territory..................... 11
appointment—term of office—powers. 1674
official acts to be effectual........... 1675
official seal and oath of office........ 1676
secretary to notify county clerks of appointments, etc., of commissioners 1677
county clerk to keep record of appointment, etc.................. 1678
may take depositions outside of territory 2618

COMMISSIONER, UNITED STATES,
may take acknowledgments......... 8
notice of appointment and dismissal.. 10

COMMISSIONERS, WATER,
shall be appointed by governor—duties, etc..............1331, 1332, 1338

COMMON BARRATRY. *See barratry.*

COMMON CARRIER. *Sec railroads.*
lien upon goods transported......... 1471

COMMON LAW OF ENGLAND,
terms of adoption of............... 498
applied to clerks of courts 2355
applied to sheriff.................... 2359
actions which survive at, survive here........................... 2364

COMMUNICATIONS, PRIVILEGED,
defined 2589

COMPENSATION,
of cross demands 2464

COMPLAINT,
for peace warrant 3156
for search warrant 3168
for arrest 3181
for road damages 3865

COMPOUNDING,
a criminal offense—penalty ...:.... 959

COMPILED LAWS,
sale of—application of proceeds.1753, 1754

COMPULSORY EDUCATION,
general provisions 3949, 3950

CONCEALED WEAPONS,
penalty for carrying............... 980

CONDEMNATION,
by territory 499
by water companies 500
by cities and towns................ 500
by railroad and other corporations .. 548

CONDITIONS PRECEDENT,
how pleaded 2478

Section

CONDUCTORS,
- authorized to arrest gamblers upon trains, when 1043

CONFESSION OF JUDGMENT,
- offer to confess, before action brought 2526
- offer to confess out of court 2527
- offer to confess in court 2528
- offer to confess, shall not affect trial. 2529
- judgment by 2668–2672
- in justice's court 3483–3485

CONSANGUINITY,
- degrees within which marriages are void 1567

CONSOLIDATION,
- of actions, when allowed 2507

CONSPIRACY,
- to procure indictment 960
- proof, in case of 3299

CONSTABLES. *See offenses against public justice.*
- when elected 1083
- vacancy in office of, how filled 1175
- special appointment—powers 1109, 1110
- fees of 1198
- election—oath and bond 1899
- residence and office to be in precinct. 1900
- shall pay over money 1909
- shall arrest person practicing as physician without authority 1929
- shall make application for guardianship of lunatics and drunkards 2290
- may serve notices of motion 2511
- may serve subpœna 2594
- property of, may be sold under execution, without valuation 2739
- attending court, privileged from arrest in civil actions 2805
- shall arrest criminals 3178
- shall attend trials in justices' courts 3467
- jurisdiction of, in civil cases 3613–3618

CONSTRUCTION,
- of words in ch. 1 of "alienation" 33
- of words in wills statute 2248
- of civil code 2338
- of pleadings, shall be liberal 2483

CONSTRUCTIVE SERVICE,
- no fees allowed for 1216
- service by publication, when made 2435
- affidavit for service by publication 2436
- publication, how made 2437
- when service complete how proved 2438
- personal service out of territory 2439
- service upon unknown heirs, etc 2440
- procedure, when defendants are not all served 2441
- *lis pendens* in general 2442
- *lis pendens*, when property is situated in other counties 2443
- of order of revivor 2539
- of notice to take depositions 2622
- opening of judgment upon 2702
- in actions to revive judgments 2714
- in *quo warranto* proceedings 3103
- in justices' court, of attachment 3570

CONSUL, UNITED STATES,
- may take acknowledgment in foreign countries 14

CONTAGIOUS DISEASES,
- penalties for spreading 1012, 1013

Section

CONTEMPT,
- of court by witness 2600
- proceedings against witness for 2602
- purchaser failing to pay at sale on execution, punishable for 2743
- disobedience of order, in examination of judgment debtor is 2829
- attachment of garnishee for 2897
- for disobeying orders of court 2941
- for failing to appear as witness before arbitrators 2953
- of jurors and officers 3393
- in justice's court, for failure of garnishee to appear 3563
- in justice's court 3590–3598

CONTINUANCES,
- of causes in supreme court 832
- in probate court, of hearings in proceedings to sell realty of minor 2261
- may be granted after amendments to pleadings 2504
- payments of costs of 2694
- general provisions 3397–3399
- in justice's court, civil actions 3434
- when depositions taken in justice's court 3460

CONTRACTION,
- when action brought, with contracted name 2399

CONTRACTS,
- gambling, void 1001
- for alien labor, void 1075
- under statute of frauds 1249, 1250
- any rate of interest may be in 1310
- marriage considered a civil 1541
- married women may make 1559, 1562
- of lunatics and drunkards, void 2320
- limitations of actions on 2369, 2370
- renewed by partial payment, or written acknowledgment 2381
- joinder in actions upon 2408

CONTRIBUTION,
- right of co-defendant on sale of wrong property 2760

CONVEYANCES. *See alienation.*
- of realty of estates of decedents 2094–2131
- effect of, lunatics and drunkards 2318
- judgment for—effects 2665
- in partition 2871, 2974

CONVICT LABOR,
- general provisions 3371–3375

CO-PARCENERS,
- partition of estate of 2962

COPIES,
- of lost pleadings may be substituted 2471
- what, shall be filed with pleading 2472
- of public documents, how proven 2593
- how obtained, for evidence 2640

CORONER'S INQUEST. *See Inquest.*

CORONER,
- when elected 1083
- vacancy in office of, how filled 1175
- fees of 1192
- duties in inquests of mining accidents 1650
- term of office—oath and bond 1876
- when keeper of jail 1877
- when to execute process 1878
- coroner's inquests—jury 1879

Section

CORONER—*Continued.*
- completing jury from bystanders—oath ... 1880
- attendance of witnesses may be enforced ... 1881
- oath of witness ... 1882
- inquisition of jury ... 1883
- arrest of persons charged with crime 1884
- coroner's return to court ... 1885
- disposition of body and effects of deceased ... 1886
- justice to act in absence of coroner ... 1887
- *post mortem* examination ... 1888
- shall make application for guardianship of lunatics and drunkards ... 2290
- when process directed to ... 2357
- may serve notice of motions ... 2511
- may serve subpœna ... 2594
- property of, may be sold under execution without valuation ... 2739
- shall not forward money by mail ... 2768
- attending court, privileged from arrest in civil actions ... 2805
- shall summon jurors ... 3390

CORPORATIONS, *See railroad companies.*
- corporations, (limitation upon holding realty by, see laws of congress in appendix.)

CORPORATIONS, MUNICIPAL
See cities and towns, counties.
- property of exempt from taxation ... 3771
- school district shall be ... 3925
- proceedings when sureties of officers ask to be discharged ... 3042–3049
- GENERAL INCORPORATION OF TOWNS,
  - authority to incorporate ... 445
  - survey and map and their requisites 446
  - census—time for taking—verification ... 447
  - inspection of survey, etc ... 448
  - notice of application to incorporate 448
  - application to be by petition ... 449
  - commissioners to hear and determine application ... 450
  - judicial notice taken of incorporation ... 450
  - first election ... 451
  - notice and conduct of first election. 452
  - qualifications of electors ... 453
  - canvass of votes ... 454
  - determination of who elected ... 455
  - certificates of election ... 456
  - record of certified statement of election ... 457
  - municipal officers ... 458
  - term of office ... 459
  - elections, when held ... 460
  - oath of officers ... 461
  - vacancies in office — removal of officers ... 462
  - notices of elections ... 463
  - duties of mayor and clerk ... 464
  - town council to be body corporate. 465
  - regular meetings of council ... 466
  - special meetings of council ... 467
  - enumeration of specific corporate powers ... 468
  - inspectors of elections ... 469
  - fiscal year ... 470

Section

CORPORATIONS, MUNICIPAL—
- GENERAL INCORPORATION OF TOWNS—*Continued.*
  - limitation on appropriation of money 470
  - limitation on expenditures ... 471
  - expenditures in absence of appropriation prohibited ... 472
  - first year excepted ... 473
  - presentation and payment of claims 474
  - passage of by-laws and ordinances. 475
  - style of ordinances—publication ... 476
  - proof of ordinances ... 477
  - determination of amount of annual tax ... 478
  - duties of assessor ... 479
  - board of equalization ... 480
  - annual tax levy ... 481
  - tax warrants—lien of taxes ... 482
  - collection of taxes—penalty for delinquency—tax deed ... 483
  - accounts of treasurer—settlements. 484
  - publication of treasurer's report ... 485
  - duties of clerk ... 486
  - powers of marshal ... 487
  - powers of policemen ... 488
  - duties of street commissioner ... 489
  - duties of fire wardens ... 490
  - jurisdiction of council ... 491
  - extension of town limits ... 491
  - police justice—jurisdiction—fees ... 492
  - punishment of persons convicted before justice ... 493
  - appeals from justice's court to district court ... 494
  - disposition of fines ... 495
  - compensation of officers ... 496
  - duties, powers and privileges of officers ... 497

CORPORATIONS, PRIVATE, DOMESTIC,
- embezzlement by officers of ... 910
- signing and issuing false certificates—penalties ... 1053, 1054
- may appropriate water ... 1358
- special charter provisions as to venue of actions against shall govern ... 2418
- actions against, where brought ... 2415, 2421
- service upon ... 2431
- constructive service upon, in certain cases ... 2435
- verification of pleadings by ... 2489, 2496
- religious—partition of property of ... 2981, 2983
- *quo warranto* proceedings against ... 3093–3125
- service on, in justice's court ... 3426–3427
- shares of, may be attached in justice's court ... 3544
- shares of stock subject to levy—sale ... 2772–2779
- what property of, shall be assessed, by assessor ... 3787
- assessment of stock of ... 3791
- confirmation of certain corporate acts ... 643
- stockholders' meeting to be held within territory ... 643
- CREATION AND REGULATION,
  - assessments against members ... 501

Section

CORPORATIONS, PRIVATE, DOMESTIC—CREATION AND REGULATION—*Continued.*
certificates of incorporation—requisites of ... 501
certificates of corporations not for direct gain ... 501
certificates as evidence ... 502
general corporate powers ... 502
places of carrying on business ... 503
principal place of business ... 504
trustees shall manage ... 505
annual election of trustees—vacancies ... 505
failure to elect trustees does not effect dissolution ... 506
corporate officers ... 507
assessments on capital stock ... 508
by-laws ... 509
transfer of stock purchase by corporation ... 510
certified copy of certificate as evidence ... 511
liability of stockholders ... 512
assessments may be paid in installments ... 512
full paid stock may be issued for property ... 513
recording certificate of final payment of capital ... 514
when dividends prohibited—liability of trustees ... 515
representatives holding stock not liable ... 516
representatives may vote stock ... 517
reservation of legislative authority over corporations ... 518
capital stock may be increased or diminished ... 519
procedure in changing amount of capital stock ... 520
notice to stockholders of proposed change ... 521
stockholders' meeting to make change—certificate of proceedings ... 522
limitation on incurring debts—liability of trustees ... 523
statement of affairs to be made on request of stockholders ... 524
mining companies may construct roads over public domain ... 525
wagon road companies may incorporate ... 526
rates of toll ... 526
toll rates, how prescribed ... 527
rates to remain unchanged for two years ... 528
rates where road lies in two or more counties ... 529
no toll when road out of repair ... 530
fine for refusing to pay toll ... 531
ditch companies may incorporate—certificate, (*see irrigation*) ... 532
right of way for ditch company ... 533
ditch company shall sell water ... 534
ditches shall be kept in good condition ... 535
application of law ... 536

Section

CORPORATIONS, PRIVATE, DOMESTIC—CREATION AND REGULATION—*Continued.*
flume companies may incorporate—certificate ... 537
bridge or ferry company—certificate ... 538
bridge or ferry to be kept in good order ... 539
toll rates shall be posted ... 540
telegraph companies may incorporate—certificate ... 541
limitation of time for completion of corporate works ... 542
general powers of corporations ... 543
limitation upon corporate powers ... 544
corporate property, damaging—penalty ... 545
issuing notes as money forbidden ... 546
corporations organized under the laws of Dakota may re-incorporate ... 547
condemnation proceedings by railroad and other corporations ... 548
SPECIAL POWERS TO RAILROAD CORPORATIONS,
may issue bonds ... 549
consolidation—proceedings to effect ... 550
when consolidation complete ... 551
effect of consolidation—rights of creditors ... 552
may subscribe to capital stock of other company ... 553
power of one to contract with another ... 554
aid by counties to railroads ... 555–565
RELIGIOUS, FAIR, FIRE AND OTHER ASSOCIATIONS,
purposes for which such association may be formed—certificate ... 566
corporate existence—how proven ... 567
powers—limitation upon property rights ... 568
by-laws—purposes ... 569
powers to raise money ... 570
division of stock into shares—transfer ... 571
assessments upon shares ... 572
limitation upon dividends ... 573
officers shall receive no salary ... 574
powers of trustees of religious societies ... 575
powers of trustees of colleges ... 576
power of militia companies to impose fines ... 577
control and regulation of fair grounds ... 578
territorial aid to fair associations ... 579
reservation of legislative control over corporations ... 580
RELIGIOUS AND ELEEMOSYNARY ASSOCIATIONS,
what religious bodies may incorporate ... 581
organization meeting ... 582
articles of incorporation ... 583
members of corporation ... 584
religious societies may re-incorpo-

Section

CORPORATIONS, PRIVATE, DOMESTIC—Religious and Eleemosynary—*Continued.*
  eleemosynary institutions—incorporation 585
    rate 586
  application of general laws to 587
  by-laws 588
Secret Societies,
  what societies may incorporate 589
  certificate of incorporation 590
  may own or alienate realty 591
  by-laws 592
  may own and sell personalty 593
  dissolution, how effected 594
  certain unincorporated bodies may convey realty 595
  how suits brought and defended by such bodies 596
  odd fellows may incorporate 597
  knights of Pythias and other secret benevolent societies may incorporate 598
  knights of labor may incorporate 599
Insurance Corporations,
  formation of company—certificate. 603
  record of certificate 604
  capital stock—assets required 605
  when authorized to commence business 606
  board of directors 607
  investments of funds 608
  certificate of insurance commissioner 609
  specific corporate powers—restrictions 610
  annual meeting of stockholders 611
  organization of board of directors 612
  appointment of minor officers—by-laws 613
  execution of contracts and policies. 614
  transfers of stock 615
  increase of capital stock 616
  limitation upon dividends 617
  limitation upon holding and conveying realty 618
  deposit of securities and notes 619
  settlement of losses 620
  mutual companies shall use word "mutual" in name 621
  annual statement of condition of companies 622
  commissioner to inquire into any company's affairs 623
  statement of notes held as assets 624
  conditions upon which foreign companies may do business 625
  certificate of authority to do business necessary 626
  annual renewal of statement by foreign companies 627
  insurance advertisements—contents 628
  duties of existing companies 629
  examination of condition of companies—duty when capital impaired 630
  stockholders shall make deficiency good 631
  liabality of directors 631
  compensation of commissioner 634

Section

CORPORATIONS, PRIVATE, DOMESTIC—Insurance Corporations—*Continued.*
  duty of commissioner when assetts insufficient 632
  commissioner may revoke certificate 633
  foreign companies subject to interstate comity 635
  publication of commissioner's certificate 636
  companies to pay expenses of examination 637
  control of delinquent companies 637
  commissioner to furnish printed forms for statement 638
  companies restricted to authorized business 639
  mutual associations 640
  general incorporation laws do not apply to 641
  "capital stock" construed 642
  secret societies not included in 742
Agricultural and Stock Associations,
  corporate powers 644
  membership—by-laws 645
  control of exhibition grounds 646
Dissolution,
  duties and powers of trustees 647
  title of property to vest in trustees 648
  dissolutions shall not abate actions 649
  actions may be prosecuted in corporate name after dissolution 650
  certain liens not affected by dissolution 651
  satisfaction of judgments against dissolved corporation 652
  chancery jurisdiction on dissolution 653
  procedure on dissolution by stockholders 654
  notice of expiration of limitation 655
CORPORATIONS, PRIVATE, FOREIGN,
  certificate or copy of charter of shall be filed with secretary, and register of deeds 600
  liability of officers, etc., for failure 601
  duties and fees of register 602
  certified copies as evidence 602
  notice of dissolution of 656
  venue of actions against 2419
  service upon 2433
  constructive service upon 2435
  property of, may be attached 2869
COSTS,
  in cases of tender before suit 2524, 2525
  jury fee deposited, shall be part of 2567
  in civil actions 2687–2700
COVENANTS,
  not implied in realty conveyances 5
  to pay debt, not implied in mortgage. 6
COVERTURE. *See marriage.*
COUNSEL. *See attorney.*
COUNTER-CLAIM,
  right of, not affected by assignment 2382
  may be demurred to 2455, 2456
  may be set forth in answer 2458
  requisites of 2459

Section

COUNTER-CLAIM—*Continued.*
- costs in subsequent suits upon 2460
- new party to 2461
- assignment or death cannot affect right of 2464
- may be made a separate action 2476
- offer to confess judgment to 2530
  - not affected by dismissal of action 2661
  - judgment upon 2676

COUNTERFEITING. *See forgery and counterfeiting.*
- disposition of material, etc., captured 3175

COUNTIES. *See titles of the several counties. See county commissioners.*
- boundaries and county seats 657–669
- proceedings when boundary lines are in dispute 670–677
- apportionment of county indebtedness upon the formation of new counties 678–683
- county libraries 684–689
- construction of artesian wells in 690–694
- Carbon County court house bonds 737–757
- Fremont County court house bonds 717–736
- Crook County court house bonds 737–757
- special tax legislation for Sweetwater County 758–762
- Johnson County court house bonds 763–784
- Uinta County jail bonds 785
- Uinta County funding bonds 800–814
- Uinta County hospital 815–822
- enumerated powers of 1791
- property of 1792
- powers of, exercised by commissioners 1793
- buildings of 1794
- name in which, shall sue and be sued 1795
- service of process against 1796
- judgment against, shall be paid by tax levy 1798
- may sue in corporate name upon official bond 2384
- in which actions must be brought 2411–2421
- property of, exempt from taxation 3771
- liability for territorial taxes—settlement 3836, 3837
- shall pay road damages 3866
- shall be divided into road districts 3874
- effect of change of boundaries of, on school districts 3978
- when summons issued to another 2425

COUNTY ATTORNEY. *See prosecuting attorney.*

COUNTY AND PROSECUTING ATTORNEY. *See prosecuting attorney.*

COUNTY CLERK. *See register of Deeds. See clerk, county.*

COUNTY COMMISSIONERS. *See commissioners, county.*

COUNTY OFFICERS,
- county commissioners 1791
- judge of probate and treasurer 1820
- clerk and register of deeds 1840
- sheriff 1858
- assessor 1872

Section

COUNTY OFFICERS—*Continued.*
- coroner 1876
- surveyor 1889
- county and prosecuting attorney 1893
- superintendent of schools 1898
- justices of the peace and constables 1899
- offices to be at county seat—records public 1901
- bonds and oaths 1902
- time of qualifying 1903
- copies of records, as evidence 1904
- extortion by officers, penalty 1905
- powers and compensation in special cases 1906
- official bonds payable to territory 1907
- officers to be electors 1908
- justices and constables shall pay over money—penalty 1909
- bonds of revenue officers 1910
- commissioners may require new bonds 1911
- qualifications of sureties 1912
- failure to give new bond renders office vacant 1913
- officer filling vacancy shall give bonds 1914
- perjury by surety 1915
- public money to be paid into treasury 1916
- officers to be paid in warrants 1917
- official year defined 1918
- fire wardens—appointment, etc. 1919
- duties and powers of fire wardens 1920
- failure to repair chimney, etc.—penalty 1921
- failure to remove inflammable material, etc.—penalty 1922
- fees and further duties of fire wardens 1923
- abatement of nuisances 1924

COUNTY SUPERINTENDENT. *See superintendent of schools.*

COUNTY SURVEYOR. *See surveyor county.*

COUNTY TREASURER. *See probate judge. See treasurer, county.*

COURTESY,
- right of abolished 2221

COURTS. *See district court, supreme court, justice's court, probate court.*

COURT COMMISSIONER,
- may administer oaths 3412

CREDITORS,
- resident, of estate, to be paid first 2198
- foreign, payment to, from estates 2199–2200

CREDITS,
- defined 3777
- assessment of 3791

CRIMES. *See criminal code, see criminal procedure in justice's court, see fines and penalties.*
- removing or selling mortgaged personalty without consent—penalty 90
- embezzlement by attorney 139
- person convicted of, cannot vote 1104
- corrupting electors and other election offenses 1159–1169
- person convicted of, cannot hold office 1171
- conviction of, cause for revocation of letters of administration 2012

GENERAL PROVISIONS,
- definition of crime 854

Section
CRIMES — GENERAL PROVISIONS — *Continued.*
intention, how manifested........ 855
who considered of sound mind.... 856
infant under ten years cannot commit crime.................. 857
lunacy and insanity as affecting guilt....................... 858
idiots cannot commit crime....... 859
advising an irresponsible person to commit an offense......... 860
married women acting under threats of husband............ 861
drunkenness not an excuse for crime........................ 862
misfortune and accident as affecting guilt.................... 863
offences committed through intimidation 864
no trial or punishment during lunacy or insanity of defendant.......................... 865
felonies and misdemeanors defined 866
attempts to commit crime—penalty 867
accessories...................... 868
accessories after the fact—penalty 869
OFFENSES AGAINST THE PERSON.
murder in first degree—penalty... 870
murder in second degree—penalty 871
manslaughter—penalties 872–874
homicide, when excusable........ 875
duelling, where party dies—penalty 876
challenge to fight duel—penalty... 877
carrying challenge—assisting at duel—indictment............ 878
poisoning—penalty.............. 879
abortion—penalty 879
woman attempting to procure abortion—penalty 880
mayhem—penalty 881
rape—penalty.................... 882
not necessary to prove emission... 883
crime against nature............ 884
assault—penalty.................. 885
assault with attempt to commit murder, etc—penalty......... 886
assault and battery—penalty...... 887
aggravated assault aud battery—penalty.................... 888
false imprisonment—penalty...... 889
kidnaping....................... 890
punishment of kidnaping.......... 891
robbery—penalty 892, 893
blackmailing—penalty........... 894
sending threatening letters—penalty........................ 895
sending threatening letters—soliciting chastity of female—penalty 896
OFFENSES AGAINST PROPERTY,
arson—penalty.................. 897
attempt to commit arson—penalty 898
burglary—penalty............... 899
house breaking—penalty.......... 900
larceny—penalty 901
bringing stolen property into territory—penalty 902
grand and petit larceny defined.... 903
penalty for petit larceny.......... 904
buying or receiving stolen goods—penalty..................... 905

Section
CRIMES—OFFENSES AGAINST PROPERTY—*Continued.*
stolen property to be restored...... 906
altering marks and brands—penalty 907
embezzlement by public officers—penalty........................ 908
refusal to pay over money, etc., by officers—penalty............. 909
embezzlement by officers—penalty 910
embezzlement by carrier—penalty 911
embezzlement by clerk, agent or servant..................... 912
allegation and proof of money in embezzlement............... 913
destruction of deeds and other writings—penalty 914
removal of land marks—penalty.. 915
embezzlement declared to be larceny....................... 916
larceny by bailee—penalty....... 917
larceny by lodger—penalty....... 918
displacing railroad signals, etc—penalty...................... 919
firing woods or prairie—penalty... 920
civil remedy for damages in such cases....................... 921
when firing woods and prairie is not actionable............... 922
FORGERY AND COUNTERFEITING,
forging public securities......... 923
forgery defined—penalty......... 924
counterfeiting or uttering counterfeit money.................. 925
having or receiving counterfeit coin 926
having or receiving forged notes.. 927
having or receiving counterfeit gold dust, etc................ 928
debasing gold or other metals..... 929
impairing value of coin........... 930
passing fictitious bill, note or check. 931
making apparatus for counterfeiting 932
proof of incorporation in case of forgery..................... 933
expert testimony................ 934
counterfeiting and defacing official seals and signatures 935
OFFENSES AGAINST PUBLIC JUSTICE,
perjury—penalty 936
perjured witness, when guilty of murder 937
indictment for perjury, sufficiency of 938
bribery of judicial and legislative officers 939
bribery of officer to obtain appointment to office, etc........... 940
attempted bribery of officers....... 941
stealing public records, etc., by public officers............... 942
oppression of prisoner by jailor.... 943
unlawful retention of office 944
unauthorized acknowledgement of instrument.................. 945
resisting or abusing public officer.. 946
resistance to law, *vi et armis*....... 947
obstructing public messengers..... 948
rescue of prisoner after conviction. 949
rescue before conviction.......... 950
procuring escape of convict....... 951
negligence of prison official...... 952

Section

CRIMES—OFFENCES AGAINST PUBLIC JUSTICE—*Continued.*
- conveying tools and weapons to prisoners 953
- rescuing person held on civil process 954
- assisting prisoner in attempt to escape 955
- rescue of prisoner from custody of officer 956
- suffering prisoner to escape before conviction 957
- refusal to receive or arrest criminal 958
- compounding criminal offense..... 959
- conspiracy to procure indictment.. 960
- unlawful exercise of office 961
- embracery defined—penalty....... 962
- common barratry defined—penalty. 963
- officious intermeddling in suits.... 964
- extortion by public officer......... 965
- malfeasance of public officer 966
- emitting bills of credit............ 967
- defacing public notices 968
- officers buying territorial and county warrants 969
- refusal to pay territorial and county warrants 970

OFFENSES AGAINST PUBLIC PEACE,
- disturbing peace in night time..... 971
- assembling to disturb peace....... 972
- affray 973
- unlawful assemblage.............. 974
- riot 975, 976
- officer refusing to prevent duel.... 977
- libeling person for not accepting challenge 978
- libel 979
- carrying concealed weapons....... 980
- non-resident carrying weapons after notification by officer 981
- penalty for carrying concealed weapons 982
- exhibiting deadly weapon in angry manner 983
- dircharging fire-arms from or near railroad trains 984
- arrest and trial of offenders........ 985
- selling or giving liquor to Indians. 986
- provoking an assault............. 987

OFFENSES AGAINST PUBLIC MORALITY, HEALTH AND POLICE,
- bigamy 988
- seduction under promise of marriage 989
- unmarried person marrying a bigamist 990
- adultery and fornication—circumstantial proof 991
- incestuous marriages defined...... 992
- punishment for incestuous marriage 993
- incest 994
- public indecency.................. 995
- keeping house for practice of fornication 996
- circulation of obscene literature.... 997
- enticing minors to gamble......... 998
- selling liquor to minors and habitual drunkards 999
- disposition of fines.............. 1000
- gambling contracts declared void.. 1001

Section

CRIMES—OFFENSES AGAINST PUBLIC MORALITY, ETC.—*Continued.*
- tavern keepers permitting gambling 1002
- obstructing highways............ 1003
- selling diseased meats or adulterated liquor 1004
- failure of owner to remove or bury dead animal 1005
- giving false weights in merchandise 1006
- adulterating foods, medicines, etc.. 1007
- selling spoiled food, medicines, etc. 1008
- cruelty to animals............... 1009
- intoxicated physician prescribing drugs 1010
- penalty if death ensue.......... 1011
- spreading contagious disease...... 1012
- liability to damages in civil action.. 1013
- keeping opium dens.............. 1014
- frequenting opium dens........... 1015
- penalty for keeping and frequenting opium dens 1016
- promoting lotteries.............. 1017
- selling lottery tickets............ 1018
- advertising lottery............... 1019
- putting offensive substances in creek, highway, etc 1020
- disposition of fines.............. 1021
- abatement of nuisance............ 1022
- throwing sawdust into streams..... 1023
- incorporated towns permitted to regulate nuisances 1024
- vagrancy 1025
- having possession of burglars tools. 1026
- having possession of offensive weapons 1027
- refusing to join *posse comitatus*..... 1028
- grave robbing.................... 1029
- illegal voting................... 1030
- bribing elector.................. 1031
- disturbing religious worship....... 1032
- justices' jurisdiction in cases of illegal voting, bribing elector, disturbing religious worship 1033
- selling liquor on Sunday, or election day 1034

OFFENSES BY CHEATS, SWINDLERS AND OTHERS,
- making fraudulent transfers to defeat creditors 1035
- obtaining credit by false representations 1036
- obtaining goods by false pretenses 1037
- hotel law to be posted 1038
- obtaining board or lodging by false representation 1039
- gambling on railroad trains....... 1040
- penalty for gambling on railroad trains 1041
- playing "three-card monte" on railroad trains 1042
- conductors authorized to arrest offenders 1043
- using false weights.............. 1044
- cheating in extracting gold 1045
- fraudulently selling land twice 1046
- selling by false weights, etc....... 1047
- warehousemen not to issue receipts until goods received 1048
- not to issue second receipt for same goods 1050

Section

CRIMES—OFFENSES BY CHEATS, ETC.—*Continued.*
- not to issue receipts as security unless invested with ownership, etc . . . 1049
- not to sell or transfer goods without consent of owner . . . 1051
- penalty for warehousemen violating the law . . . 1052
- signing false stock certificates . . . 1053
- issuing false stock certificates . . . 1054
- stable keeper shall not use animal without consent of owner . . . 1055

MALICIOUS MISCHIEF.
- malicious destruction of property . . 1056
- taking and using property without consent of owner . . . 1057
- injuring telephone and telegraph property . . . 1058
- injuring public jail . . . 1059
- court to fix punishment . . . 1060
- punishment and costs in misdemeanors fixed by court or justice . . 1061
- disposition of fines . . . 1062
- prisoner may be committed until fine and costs are paid . . . 1063
- taking logs, lumber, etc., from river 1064
- jurisdiction . . . 1065
- duty of officer arresting such offenders . . . 1066
- receiving or secreting logs . . . 1067
- saw logs to be branded . . . 1068
- clerk's fee for recording brand . . . 1069
- destroying or altering log brands . . 1070
- presumptive evidence from possession . . . 1071
- assessing or collecting timber tax, without authority of law . . . 1072
- seizure of timber without lawful process . . . 1073
- aiding or abetting timber offenses . . 1074

OFFENSES AGAINST PUBLIC POLICY,
- contracts for alien labor void . . . 1075
- alien may recover upon *quantum meruit* . . . 1076
- third party receiving pay for alien's labor . . . 1077

REWARDS FOR APPREHENSION OF CRIMINALS,
- when governor shall offer rewards . 1078
- prosecuting attorney shall make application to governor . . . 1079
- advertisement by governor of reward — reward for unknown criminals . . . 1080
- reward for stock thief, robber or train wrecker . . . 1081
- reward if offender is arrested out of county . . . 1082

CRIMINAL ACTION,
- fees in, by whom paid . . . 1210
- venue of . . . 3403–3406

CRIMINAL CODE.

PROCEEDINGS TO PREVENT CRIME,
- complaint and warrant . . . 3156
- examination before justice—recognizance . . . 3157
- commitment of accused, in default of recognizance . . . 3158
- discharge of accused—costs . . . 3159

Section

CRIMINAL CODE—PROCEEDINGS TO PREVENT CRIME—*Continued.*
- condition of recognizance taken in term time . . . 3160
- recognizances to be returned to clerk of court . . . 3161
- proceedings in district court . . . 3162
- accused committed in default of surety . . . 3163
- costs on finding against accused . . . 3164
- accused discharged if complainant fails to appear . . . 3165
- complainant shall pay costs when accused discharged . . . 3166
- authority of justice when offense committed in his presence . . . 3167

SEARCH WARRANTS,
- for what purposes issued . . . 3168
- requisites of complaint . . . 3169
- requisites of warrant . . . 3170
- when search may be made at night 3171
- property shall be preserved as evidence . . . 3172
- justice shall control property . . . 3173
- disposition of property . . . 3174
- disposition of counterfeit coin, etc . . 3175
- sale of unclaimed stolen property, etc . . . 3176
- sale of property when thief not taken . . . 3177

ARREST,
- who may make arrests . . . 3178
- when citizen may make arrest . . . 3179
- who may issue process . . . 3180
- warrants shall be issued on complaint . . . 3181
- security for costs may be required 3182
- requisites of warrant . . . 3183
- accused may be arrested in any county . . . 3184
- when justice of other county may issue warrant . . . 3185
- authority of officer in executing warrant . . . 3186

EXAMINATION,
- duty of officer making arrest . . . 3187
- adjournment of examination . . . 3188
- recognizance may be taken on adjournment . . . 3189
- proceedings on forfeiture of recognizance . . . 3190
- examination . . . 3191
- separation of witnesses . . . 3192
- when accused discharged . . . 3193
- when recognizance of witnesses shall be taken . . . 3194
- when witness required to give surety 3195
- recognizance of married women or minor . . . 3196
- witness committed, in default of recognizance . . . 3197
- criminal docket—transcript to district court . . . 3198

BAIL,
- condition of recognizance . . . 3199
- condition when court in session . . . 3200
- accused may be held for higher offense . . . 3201
- commitment of accused . . . 3202
- prisoner may be admitted to bail . . . 3204

Section
CRIMINAL CODE—Bail—*Continued.*
clerk shall make record of recognizance 3203
deposit of recognizance and release of prisoner 3205
when sheriff may take recognizance in misdemeanors 3206
return of writ of recognizance 3207
court shall fix amount of bail in felonies 3208
amount of bail shall be indorsed on warrant 3209
officer shall take recognizance 3210
surety may surrender defendant ... 3211
surrender of defendant in vacation. 3212
execution of recognizance in vacation 3213
forfeiture of recognizance and entry of default 3214
procedure in obtaining judgment on forfeited recognizance 3215
law applicable to recognizances.... 3216
court may remit or reduce penalty. 3217
remission after judgment or surrender of defendant 3218
technical defects in recognizance disregarded 3219
bail bond—amount and condition—by whom taken 3220
Grand Jury Proceedings,
clerk shall make lists of persons committed or bailed 3221
number of jurors—foreman 3222
oath of foreman 3223
oath of jurors 3224
charge of court—jurisdiction of jury 3225
prosecuting attorney may appear before jury—restrictions 3226
process for witness 3227
witness shall be sworn 3228
proceedings on refusal of witness to testify 3229
court may compel witness to answer 3230
filling vacancy in grand jury 3231
court may empanel new grand jury. 3232
finding of certain indictments shall not be disclosed 3233
proceedings of grand jury shall not be disclosed 3234
finding, indorsement and signing of indictment 3235
indorsement in case of misdemeanor 3236
when prosecuting witness liable for costs 3237
examination of jail and report 3238
presentation and filing of indictment 3239
when prisoner discharged if not indicted 3240
publication of report of grand jury. 3241
Indictments, and Process Thereon,
election required, when different indictments for same offense 3242
place of indictment for receiving stolen goods 3243
defects which do not invalidate indictments 3244
description of forged instrument... 3247

Section
CRIMINAL CODE—Indictment and Process Thereon—*Continued.*
certain variance not ground for acquittal 3245
requisites of indictment for murder and manslaughter 3246
description of counterfeit instrument or apparatus 3248
description of other instruments ... 3249
allegation and proof of intent to defraud 3250
allegation of joint ownership 3251
sufficiency of indictment for election offense 3252
joinder of other offenses in indictment for larceny 3253
description and proof of money, etc. 3254
warrant on indictment, when issued and how executed 3255
warrant may issue to another county 3256
custody of convict indicted while in penitentiary 3257
Pleas to Indictment—Arraignment—Change of Venue,
when defendant shall be served with copy of indictment 3258
assignment of counsel for indigent persons 3259
time allowed for examination of indictments 3260
exceptions to indictments 3261
defects in, indictments, reached by motion to quash 3262
plea and abatement 3263
causes of demurrer 3264
when defendant held after indictment quashed 3265
certain defects waived by pleading. 3266
misnomer—plea in abatement 3267
demurrer and reply to plea in abatement 3268
accused may plead after demurrer. 3269
arraignment of accused 3270
plea in bar—reply—trial of issue... 3271
pleas in bar and abatement shall be in writing, etc 3272
when accused shall plead to the merits 3273
proceedings on plea of "guilty"... 3274
proceedings on plea of "not guilty" 3275
proceedings when venue changed.. 3276
prisoner shall be conveyed to place of trial 3277
witnesses shall be recognized 3278
Juries and Challenges,
jury shall try accused 3279
peremptory challenges by accused 3280
challenges by prosecution—challenges for cause—triers 3281
causes for challenge 3282
certain opinions not cause for challenge 3283
trial of challenge by court 3284
separate peremptory challenges by each defendant 3285
oath of jury 3286
affirmation of juror 3287
Evidence,
defendant may testify, or make statement 3288

Section

CRIMINAL CODE — EVIDENCE — *Continued.*
  process for witnesses 3289
  service of subpœna by special deputy 3290
  witnesses for defendant and the manner of securing them 3291
  manner of procuring and examining witnesses 3292
  defendant may take deposition of absent witness 3293
  manner of taking and returning deposition 3294
  discharge of accused, when evidence insufficient, etc 3295
  proof necessary in case of seduction 3296
  proof necessary in case of perjury 3297
  proof in case of treason 3298
  proof in case of conspiracy 3299
TRIAL AND EXCEPTIONS,
  order of proceedings on the trial 3300
  when accused may be tried in his absence 3301
  separate trials in cases of felony 3302
  when jury may have view of place 3303
  when accused held to answer for other offense 3304
  discharge of jury without prejudice 3305
  exceptions by defendant 3306
  exceptions by prosecuting attorney 3307
  proceedings on exceptions by prosecuting attorney 3308
  when bill filed and decision rendered 3309
  effect of decision of supreme court 3310
  when delay in trial entitles prisoner to discharge 3311
  when delay in trial entitles bailed defendant to discharge 3312
  limitation upon right of defendant to discharge 3313
VERDICT, JUDGMENT AND PROCEEDINGS THEREON,
  application of rules in civil cases—separation of jury 3314
  discharge of jury before verdict, without prejudice 3315
  jury may be polled 3316
  jury shall determine value of stolen property, etc 3317
  jury may find accused guilty of lesser offense 3318
  defendant shall be interrogated before sentence 3319
  court shall pronounce judgment 3320
  when court shall hear testimony in mitigation of sentence 3321
  suspension of sentence on notice of appeal 3322
  recognizance required on suspension of sentence in misdemeanors 3323
  if no appeal taken, sentence shall be executed 3324
  sentence shall be executed on affirmance of judgment 3325
  felon shall be committed during suspension—escape 3326
  convict shall be taken to penitentiary in ten days 3327

Section

CRIMINAL CODE—VERDICT, ETC. —*Continued.*
  authority of sheriff in conveying convict 3328
  execution of jail sentence 3329
  commitment on non-payment of fine 3330
  punishment in case of misdemeanor 3331
  prisoner may be required to work out fine 3332
  limitation upon time for executing death penalty 3333
  where execution shall take place 3334
  when execution may be within jail 3335
  when sheriff shall prepare place for execution 3336
  who may be present at execution 3337
  when sheriff may call militia 3338
  sheriff shall make return of proceedings 3339
  inquest shall be had if convict appears insane 3340
  proceedings on the inquest 3341
  governor shall order execution, when convict restored 3342
  proceedings when female convict appears pregnant 3343
  execution after period of pregnancy 3344
  execution of death penalty after capture of escaped convict 3345
  clerk shall send copy of sentence to auditor 3346
NEW TRIAL,
  cases for granting new trial 3347
  application—when made 3348
  when application shall be supported by affidavits 3349
MOTIONS IN ARREST,
  causes for arrest of judgment 3350
  defect of form, not cause of arrest 3351
  effect of arresting judgment 3352
  time for making motion 3353
PROCEEDINGS IN ERROR,
  writ of error, allowed on verified petition, etc.—time 3354
  proceedings on allowance of writ in capital cases 3355
  proceedings on allowance of writ in other cases 3356
  misdemeanor—suspension of sentence—recognizance 3357
  proceedings on reversal, when defendant in penitentiary 3358
  when defendant discharged 3359
  defendant returned to jail, if new trial ordered 3360
FUGITIVES FROM JUSTICE,
  arrest of fugitives, from other states 3361
  examination and commitment of fugitive 3362
  notice of detention 3363
REPRIEVES AND PARDONS,
  conditional reprieve, and its acceptance 3364
  confinement of reprieved person 3365
  proceedings when conditions of reprieve violated 3366
  application for pardon 3367
  notice of application for pardon 3368

Section

CRIMINAL CODE—Reprieves and Pardons—*Continued.*
prosecuting attorney shall make statement to governor........ 3369
application and notice not necessary in certain cases................ 3370
Provisions Relating to Convict Labor,
prisoners in jail may be put to work 3371
superintendence of prisoners while at work.................... 3372
hiring convict labor prohibited.... 3373
employment of jail prisoners when permitted.................... 3374
employment of prisoners in penitentiary when permitted..... 3375
CROOK COUNTY,
cannot aid railroad companies....... 565
boundaries of.................. 661, 670
county seat of................ 662
in first judicial district............ 839
population assumed at 5000 in determining salaries................ 1226
width of roads in.................. 3868
Court House Bonds,
authority to erect building........ 737
plans and specifications............ 738
advertising for proposals.......... 739
award of contracts............... 740
contractors to give bond.......... 741
authority to issue bonds.......... 742
terms of bonds................... 743
registration of bonds............. 744
interest coupons................. 745
tax levy......................... 746
application of tax............... 747
redemption of bonds.............. 748
time and place of payment........ 749
pledge of property............... 750
sale of bonds.................... 751
custody of funds—treasurer's commission...................... 752
treasurer shall give additional bond 753
expenses paid out of general fund. 754
construction of bonding statute... 755
bond election.................... 756
result of election............... 757
CROSS DEMANDS,
compensation of.................. 2464
CROSS PETITION. *See answer.*
allowed in pleadings............. 2446
CRUELTY TO ANIMALS,
penalty for...................... 1009
CUSTODY,
of jury in civil cases............2552, 2555
DAMS,
restrictions upon..............3894, 3900
DEAF AND DUMB INSTITUTE.
See blind, deaf and dumb institute.
DEATH. *See revivor.*
actions for, which survive...........2364*a*
saving of right of action, in case of... 2380
cannot affect right of counter-claim or set-off..................... 2464
abatement of action by............. 2531
ground for vacation of judgment, when 2701
of debtor under arrest shall not satisfy judgment................ 2802
DEATH PENALTY,
execution of—general provisions.3333-3345

Section

DE BONIS NON,
letters, when issued................ 2022
DEBTOR, JUDGMENT,
examination of................2820-2837
DEBTS,
may be deducted from credits, in making assessment................ 3792
DECORATION DAY,
a legal holiday..................... 1430
DEED. *See alienation.*
of realty of estate of decedent...... 2123
of property of minor............... 2265
of realty of lunatics and drunkards... 2315
on sale of realty, on execution...2744-2748
wife shall join in execution of, upon homestead.................... 2784
in actions to complete real contracts. 3005, 3007
of entailed and life estates.......... 3013
tax deed.......................3831, 3832
DEEDS OF TRUST,
form of.......................... 52
sale by trustee—notice of sale....... 53
manner of publishing notice of sale.. 54
form of deed on sale under......... 55
DEFAULT,
judgment on, in civil actions........ 2520
DEFEASANCE, DEED OF,
when unrecorded does not affect absolute conveyance............... 21
DEFENDANT,
in actions, designated.............. 2361
joinder of........................ 2395
unwilling parties may be made...... 2396
when parties numerous, one may appear for all.................... 2397
joinder of, when several are liable... 2398
in execution may have plaintiff made defendant in interpleader........ 2407
may demur to part and answer to part. 2453
may demur to reply................ 2454
may move to make counter-claim and set-offs separate actions......... 2476
tender of money by, before suit...... 2524
tender of performance, etc., before suit.......................... 2525
upon death of, in whose name action revived....................2541, 2542
limitation upon revivor of action, on death of...................... 2543
may have action dismissed for want of revivor..................... 2546
motion by, for security of costs..2688-2690
costs when, disclaims............... 2693
payment of costs by................ 2695
may obtain injunction, when........ 2934
DELEGATE TO CONGRESS,
how elected....................... 1083
vacancy in office of, how filled...... 1174
DELINQUENTS, JUVENILE. *See juvenile delinquents.*
DEMURRER,
allowed in pleadings............... 2446
causes of, to petition.............. 2449
shall specify grounds.............. 2450
objections may be taken by answer—when made...................... 2451
defendant may demur to part and answer to part................ 2453

Section

- DEMURRER—*Continued.*
  - misjoinder of actions—procedure 2452
  - demurrer to reply 2454
  - demurrer to answer 2455
  - causes of demurrer, to counter-claim and set-off 2456
  - of plaintiff to answer demanding affirmative relief 3467
  - time in which it may be filed 2484
  - may be heard at any time 2521
  - in *mandamus* 3080, 3081
  - in criminal actions 3264, 3268
- DENTISTS,
  - need not be jurors 3376
- DEPOSITIONS,
  - in legislative election contests 1140, 1142
  - territorial stenographer may take 1766
  - in probate court, to support demands against estate 2147
  - subpœna, on taking 2596
  - of prisoners 2605
  - testimony may be taken by 2609
  - defined 2610
  - when may be used 2613
  - when taken 2614
  - testimony before referee, etc., may be used as 2615
  - in foreign suits 2616
  - before whom taken in territory 2617
  - before whom taken out of territory 2618
  - before whom shall not be taken 2619
  - notice to take—service 2621, 2622
  - by whom written 2623
  - transmission to clerk 2624
  - may be used before justice *et al* 2625
  - when used in other actions 2626
  - authentication of, and certificate 2627, 2628
  - when may be read 2629
  - time of filing 2630
  - fees for taking 2631
  - exceptions to 2632–2635
  - in applications for new trial 2655
  - in proceedings to perpetuate testimony 3071
  - in criminal actions 3294
  - in justice's court 3457–3460
- DEPUTIES,
  - territorial auditor and treasurer shall have—bonds 1686–1687
  - of county treasurer 1835
  - of sheriffs 1860, 1863–1866
  - of county clerk 1841
  - of county surveyors 1889
  - general powers of 2339
  - of assessor 1874
- DESCENT AND DISTRIBUTION OF PROPERTY,
  - rule of, as to estate of non-resident, 2195–2200
  - rule of descent—dower and courtesy abolished 2221
  - postumous children shall inherit 2222
  - inheritance by kindred of the half blood 2223
  - advancements—probate judge shall determine 2224
  - when maintenance, etc., not an advancement 2225
  - alienage not to affectin heritance 2226
  - illegitimate children, inheritance by 2227

Section

- DESCENT AND DISTRIBUTION OF PROPERTY—*Continued.*
  - divorce not to affect inheritance 2228
  - appointment and distribution, by whom made 2229
  - rule of descent from illegitimate persons 2230
  - absolute property of widow 2231
  - widow may relinquish and take other property or money 2232
  - right of widow not affected by will 2233
- DESERT LAND ENTRIES,
  - subject to taxation, when 3776
- DETECTIVE, STOCK,
  - appointment and duties of 4143
- DEVISE. *See wills.*
- DEVISEE,
  - constructive service, upon unknown 2440
  - may compel completion of real contracts 3008
- DIRECTORS,
  - of school districts 3921–3963
- DISABILITY,
  - saving to persons under, in limitations of actions 2367, 2375
- DISCHARGE,
  - of mortgages on margin of record 30
  - of mortgages by certificate of release 31
  - of jury, before verdict 2558
  - of jury after verdict 2562
  - of attachment by undertaking 2893
  - of attachment on judgment for defendant 2902
- DISCOVERY,
  - action for 2641
- DISMISSAL,
  - of action 2660, 2662
  - of action, for failure to give security 2688
- DISTRIBUTION. *See distribution of estates in executors and administrators, and descent and distribution of property.*
  - of property of intestate 2230
- DISTRICT COURT,
  - admission of attorneys to 120–125
  - disbarment of attorneys from 126–136
  - jurisdiction of, in apportionment in indebtedness between old and new counties 679–682
  - jurisdiction of, in disputes of county boundary lines 673–676
  - rules of practice in 826
  - judicial districts defined 839
  - assignment of judges 840
  - terms in first and second districts 841
  - terms in third district 842
  - special terms 843
  - temporary assignments of judges by governor 844
  - adjournments by clerks in absence of judge 845
  - when judge may act in another district 846
  - appointment of deputy clerks 847
  - several deputies may be appointed in same county with clerk 848
  - appointment to be entered on record 849
  - bonds of clerks and deputies 850
  - how bonds taken and filed 851
  - certified copy of bond as evidence 852

Section

DISTRICT COURT—*Continued.*
  action upon bond.................. 853
  to fix punishment in certain crimes and misdemeanors 1060
  jurisdiction in contested election cases 1137, 1150
  may allow writ of *habeas corpus*...... 1266
  jurisdiction in water right cases..... 1339, 1345, 1354
  jurisdiction in divorce proceedings.. 1569–1598
  appeals to, from decisions of mining inspector 1652
  appeal to, in disallowance of claims by county commissioners........ 1808
  appeal from probate court to—procedure.................2213, 2218, 2220
  jurisdiction in cases of abandonment. 2285
  jurisdiction over juvenile delinquents 2332, 2335
  may require jutification of surety.... 2342
  clerks of, governed by law relating to clerks of district courts 2354
  may appoint guardian *ad litem*, or trustee, for minor or insane person, or may dismiss action brought by next friend......2387–2493
  may determine fact of insanity 2391
  may determine rights of parties not before it 2402
  order of, in interpleader 2405
  in misjoinder, may order several petitions filed..................... 2452
  may allow new parties to counter-claims and set-offs 2461, 2463
  may strike obscene words from pleading, on its own motion.......... 2474
  may allow copies of lost pleadings to be substituted 2471
  may allow counter-claim and set-offs to be made separate actions..... 2476
  may extend time for filing pleadings. 2485
  may grant continuances after amendments........................ 2504
  may allow supplemental pleadings.. 2506
  must try issues of law, and may try issues of fact.............2517, 2518
  may extend time to answer after default 2520
  may order cases tried, or hear demurrer or motion at any time... 2521
  may order actions maturing during term on trial docket........... 2522
  shall try challenges, of jurors....... 2551
  shall give instructions in civil actions 2553
  shall admonish jury................ 2556
  shall give further instructions to jury 2557
  may discharge jury before verdict... 2558
  may instruct to find special verdict.. 2564
  may order reference............2573–2575
  may appoint master commissioners—references to..............2582–2585
  may release imprisoned witness..... 2603
  may vacate or modify its judgments 2701–2711
  revivor of judgments of............ 2714
  lien of judgments of............... 2722
  may grant injunction.............. 2921
  jurisdiction of, in actions to complete real contracts................ 3006

Section

DISTRICT COURT—*Continued.*
  jurisdiction of, in actions for sale of entailed or life estates........... 3009
  jurisdiction of, in actions for relief against illegal taxes and assessments......................... 3053
  jurisdiction, in contests of wills...... 3057
  may issue writ of *mandamus*......... 3074
  jurisdiction of, in error............. 3127
  jurisdiction in proceedings to prevent crime 3162
  shall try causes affecting realty, from justice's court................. 3435
  appeal to, from justice, in motion to set aside award—proceedings... 3600–3602
  appeal to, from justice's court, in criminal cases..............3653–3661
  appeal from, in justice of the peace criminal cases to supreme court 3662
  CLERKS OF,
    fees of........................ 1186
    shall issue certificate to jurors..... 1209
    shall keep record of attendance of jurors and witnesses.......... 1211
    shall make statement of attendance to commissioners............ 1212
    shall put name of all witnesses demanded at one time in one writ 1213
  TRIAL BY,
    trial by jury, how waived—deposit of jury fee.................. 2567
    general and special findings by court 2568
    jury provisions to apply to trial by court 2569
    submission of controversy on alleged statement............. 2570
    record, what constitutes........... 2571
    judgment, enforcement and reversal 2572
DITCH COMPANIES. *See corporations, private, irrigation.*
  may incorporate—rights and duties... 533–536
  condemnation proceedings by........ 548
DITCHES. *See irrigation.*
  owners of, shall prevent fish from entering......................... 1247
  to drain roads 3881
  owners of shall maintain headgates, when........................ 3902
DIVIDENDS,
  when prohibited in private corporations for gain.................. 515
  limitation upon in certain corporations 573
  limitation upon in insurance corporations......................... 617
DIVORCE AND ALIMONY,
  void marriages defined............. 1567
  marriages without legal consent voidable 1568
  petition to annul marriage.......... 1569
  petition to affirm marriage......... 1570
  causes for divorce................. 1571
  residence required of plaintiff........ 1572
  collusion or equal guilt prevents divorce......................... 1573
  parties competent to sue and testify.. 1574
  process may issue to any county..... 1575
  action, how conducted............. 1576

Section

- DIVORCE—*Continued.*
  - restraint of husband during litigation. 1577
  - temporary alimony—costs.......... 1578
  - care and custody of children......... 1579
  - provision for children in decree...... 1580
  - disposition of property—alimony..... 1581
  - restraining orders may be granted during litigation.............. 1582
  - examination of husband............ 1583
  - petition for support of wife and children......................... 1584
  - disposition of wife's personal estate.. 1585
  - court may appoint trustees for children......................... 1586
  - decree for alimony, etc., may be revised......................... 1587
  - legitimacy of children presumed..... 1588
  - certain divorces not to affect legitimacy of children.............. 1589
  - divorce because of prior marriage—legitimacy of children......... 1590
  - when issue deemed illegitimate 1591
  - annulling marriage when party under age.......................... 1592
  - next friend to prosecute for idiot.... 1593
  - petition by restored lunatics 1594
  - custody of children on annulled marriage.......................... 1594
  - physical incapacity as cause for divorce—restrictions 1596
  - corroborating evidence required..... 1597
  - proof of adultery insufficient, when.. 1598
  - residence of married women........ 1599
  - certain divorces legalized........... 1600
  - shall not affect inheritance......... 2228
  - constructive service in proceedings for 2435
- DOCKET,
  - shall be kept by clerk of district court 2347
  - of appeals from justice's court....... 3491
  - trial, clerk shall prepare 2519
  - bar, clerk shall prepare............ 2523
- DOCUMENTS,
  - admission of genuineness of papers, may be required—costs........ 2636
  - production of books and papers 2637
  - inspection of books and documents.. 2638
  - appointment of master to inspect books, etc..................... 2639
  - copies of writings, method of obtaining.......................... 2640
  - action for discovery 2641
- DOGS,
  - extermination of vicious—use of 4132–4134
- DORMANT JUDGMENTS,
  - revivor of 2714–2716
  - when judgment becomes 2727
- DOWER. See *laws of congress in appendix.*
  - right of abolished................. 2221
- DRUMMERS,
  - license of........................ 1456
- DRUNKARDS. See *lunatics and drunkards.*
- DRUNKARDS, HABITUAL,
  - penalty for selling liquor to........ 999
- DRUNKENNESS,
  - not an excuse for crime............ 862
- DUELLING,
  - defined—penalty.................. 876

Section

- DUELLING—*Continued.*
  - challenge to fight.................. 877
  - carrying challenge—assisting at..... 878
  - libeling person for not accepting challenge 978
- EARNINGS. See *wages.*
- EDUCATION. See *colleges.*
  - societies to maintain may incorpoate 566
- EJECTMENT. See *forcible entry and detainer.*
- ELECTIONS,
  - bond, to aid railroad companies...... 559
  - penalty for illegal voting........... 1030
  - penalty for bribing electors........ 1031
  - unlawful to sell liquor on day of..... 1034
  - notice of, shall be published......... 1816
  - sufficiency of indictments, against election laws................... 3252
  - in school district...............3920–3932
  - General and Special Elections—Qualifications of Electors,
    - general elections—when held—officers to be chosen............ 1083
    - special elections—when and for what purpose held........... 1084
    - when vacancy to be supplied at general election.............. 1085
    - special elections, how conducted.. 1086
    - place of holding elections......... 1087
    - when judges may change polls.... 1088
    - duties of judges upon changing polls........................ 1089
    - secretary to give notice of officers to be elected................ 1090
    - secretary to give notice of existing vacancy..................... 1091
    - secretary to give notice of expiration of term of legislators..... 1092
    - special elections, by whom ordered 1093
    - form of order.................... 1094
    - special elections, to fill vacancy in legislature.................. 1095
    - counties to be divided into election precincts.................... 1096
    - proclamation and notice of election 1097
    - appointments of judges of election —notice...................... 1098
    - clerks of elections—term of service, of judges of election.......... 1099
    - electors to fill vacancy when judges absent................. 1100
    - oath of clerks and judges shall be in writing—regulations......... 1101
    - qualifications of electors.......... 1102
    - female suffrage.................. 1103
    - persons disqualified from voting... 1104
  - Manner of Conducting and Canvassing Returns,
    - manner of filling vacancy in offices of judges—oath............. 1105
    - oath of clerks 1106
    - clerks to keep poll lists........... 1107
    - time and manner of opening and closing polls 1108
    - judges of election to appoint constable 1109
    - powers of constable 1110
    - disturbing elections—penalty 1111
    - electors to have free access to polls. 1112
    - challengers 1112

Section

ELECTIONS—MANNER OF CONDUCTING AND CANVASSING RETURNS—*Continued.*
- electors privilege from arrest..... 1113
- names to be on one ballot......... 1114
- vote to be by ballot, etc.. 1115
- where electors shall vote......... 1116
- challengers to be admitted to election room.................. 1117
- oath of elector when vote challenged...................... 1118
- vote to be received when oath taken 1119
- who may administer oath......... 1120
- ballot box—manner of protecting.. 1121
- manner of receiving ballots judges and clerks to challenge....... 1122
- how poll lists and ballot box kept during adjournment.......... 1123
- manner of canvassing and returning votes form of certificate...... 1124
- poll books, etc., to be returned to county clerk—special messenger.......................... 1125
- disposition of ballots by county clerk 1126
- canvass of returns, by county clerk and justices—certificate of election........................ 1127
- county clerk to make certificate for compensation of judges, etc.... 1128
- copy of abstracts of votes to be sent to secretary.................. 1129
- when secretary to send messengers for returns.................. 1130
- territorial canvassing board, and its duties—penal provisions...... 1131
- refusing to receive votes—penalty. 1132
- neglect of duty by county clerk.... 1133
- mutilating or stealing poll book—penalty................... 1134
- all precincts returns to be counted. 1135

MANNER OF CONTESTING ELECTIONS,
- contests in legislature............ 1136
- other contests, to be determined in district courts............... 1137
- who may contest the election of legislator.................... 1138
- notice of legislative contest....... 1139
- notice of taking depositions....... 1140
- attendance of witnesses, etc., may be enforced................. 1141
- manner of certifying and transmitting depositions............. 1142
- secretary to deliver papers to presiding officer................. 1143
- powers of legislature unabridged.. 1144
- who may contest elections of county and precinct officers........ 1145
- statement to be filed with clerk of court......................... 1146
- notice of contest 1147
- evidence, how taken.............. 1148
- trial, how conducted............. 1149
- contest in matters submitted to vote of people.................... 1150
- when electors may defend contest. 1151
- judgment of court in contest cases. 1152
- tie vote, how determined in contest. 1153
- effect of certified copy of judgment 1154
- when election declared void....... 1155
- appeals to supreme court.......... 1156

Section

ELECTIONS—*Continued.*

MISCELLANEOUS PROVISIONS.
- precincts to be furnished with ballot boxes, etc.................... 1157
- compensation of judges and clerks—judges to retain duplicate of returns...................... 1158
- unlawful voting—penalty......... 1159
- certain election offenses defined... 1160
- working for hire at elections prohibited...................... 1161
- bringing unqualified voters into county...................... 1162
- stuffing ballot box—penalty....... 1163
- stuffing ballot box by judges of election—penalty............... 1164
- officer revealing how elector voted—penalty..................... 1165
- publishing vote of elector—penalty 1166
- offenses by clerks of election...... 1167
- failure to deliver poll books to postmaster—penalty.............. 1168
- fraud in canvassing votes—penalty 1169
- resignations, to whom made...... 1170
- how elective offices become vacant 1171
- when vacancy exists, how determined...................... 1172
- vacancy in legislature, how filled.. 1173
- vacancy in office of delegate to congress—special election........ 1174
- vacancy in county or precinct offices, how filled............... 1175
- how election conducted, where officer fails to give required notice. 1176
- application of election law........ 1177

ELECTORS,
- at elections, privileged from arrest in civil actions................ 2805
- when competent jurors............ 3376
- qualifications of, at school elections.. 3920, 3932

ELEEMOSYNARY INSTITUTIONS,
- may be incorporated.............. 585

EMBEZZLEMENT,
- defined—penalty.................908–916
- of live stock—penalty............ 4140

EMBRACERY,
- defined—penalty.................. 962

EMINENT DOMAIN. *See condemnation.*

ENFORCEMENT OF JUDGMENT. *See execution.*

ENTAILED ESTATES,
- actions for sale of..............3009–3019

ENTRY AND DETAINER. *See forcible entry and detainer.*

EQUALIZATION. *See board of equalization.*
- of taxes in cities and towns......... 480

EQUITABLE ASSETS,
- proceedings against, in aid of execution......................... 2812

EQUITY, *See action, form of.*

ERROR. *See proceedings in error.*
- ground for new trial.............. 2652
- petition in, shall not be dismissed.... 2661
- proceedings in, in criminal actions, general provisions.........3354–3360

JURISDICTION AND PROCEDURE IN,
- final order defined................ 3126

Section

ERRORS—JURISDICTION AND PROCEDURE IN—*Continued.*
- jurisdiction of district court....... 3127
- jurisdiction of supreme court...... 3128
- printing of record in supreme court 3129
- when supreme court shall assess penalties.................... 3130
- petition in error—summons....... 3131
- issuance and service of summons.. 3132
- when summons shall issue, after waiver of error.............. 3133
- transcript to be filed with petition 3134
- transcript shall be furnished on payment of fees............. 3135
- stay of execution of judgment..... 3136
- undertaking shall be approved.... 3137
- substitute for undertaking........ 3138
- personal representatives need not give undertaking............ 3139
- if restitution undertaking given, execution may issue......... 3140
- limitation on time, for proceeding in error..................... 3141
- stay of execution on judgment of justice...................... 3142
- stay of execution in other cases.... 3143
- proceedings after reversal......... 3144
- costs on error.................... 3145
- misprison of clerk, when ground of error....................... 3146
- rendering judgments prematurely is clerical error................ 3147
- penalty on affirmance in district courts....................... 3148
- writs of error and *certiorari*, abolished.................... 3149
- proceedings when judgment of justice is affirmed.............. 3150
- proceedings when judgment of justice is reversed.............. 3151

ERRORS,
- in pleadings, when immaterial disregarded...................... 2502
- exceptions to, of depositions......... 2635

ESCAPE,
- of felon—duties of officers........... 3326

EVANSTON, CITY OF,
- corporate limits and name.......... 270
- trustees—election and compensation 271
- appointive officers................ 272
- annual tax........................ 273
- first election—statement to be filed with county clerk............. 274
- notice of election.................. 275
- vacancies in board of trustees....... 276
- president of board.................. 277
- oath of officers.................... 277
- general powers..................... 278
- special elections.................. 279
- qualifications of electors........... 280
- opening and closing of polls......... 281
- receiving and canvassing votes...... 282
- inspectors of elections............. 383
- annual meeting of trustees.......... 284
- appointment of officers............. 284
- enumeration of specific corporate powers....................... 285
- fines and penalties................. 286
- presentation and verification of claims....................... 288

Section

EVANSTON, CITY OF—*Continued.*
- appropriation of money............ 287
- payment of claims by warrants...... 289
- power to borrow money--restrictions 290
- bonds of officers.................. 291
- successors in office, deliver of corporate property to............... 292
- general tax........................ 293
- duties of assessor.................. 294
- board of equalization............... 295
- tax levy.......................... 296
- tax warrant........................ 297
- collection of taxes—distress and sale 298
- president may act as mayor......... 299
- duties of treasurer................. 300
- publication of financial statement.... 301
- duties of clerk..................... 302
- powers of marshal................. 303
- street improvements................ 304
- fire wardens...................... 305
- public grounds.................... 306
- evidence of corporate capacity...... 307
- collection of fines and penalties...... 308
- proof of ordinances 309
- punishment by imprisonment....... 310
- prosecution of offenders........... 311
- rules of practice.................. 312
- passage and record of ordinances.... 313
- manner of effecting incorporation.... 314
- form of ballot.................... 315
- first election...................... 316
- all elections to be by ballot.......... 317
- site of county jail.................. 785
- county hospital to be in or near..... 815
- location of insane asylum........... 3739

EVIDENCE. *See testimony.*
- when instruments affecting realty, or the record thereof, admissible.... 21
- certified copies of certificates of incorporation.....................502, 511
- of roads of mining companies....... 525
- of the existence of foreign corporations....................... 602
- certified copy of bond of clerk of district court by auditor.......... 852
- injury to property from firing woods or prairie, *prima facie* evidence of negligence.................... 922
- proof of incorporation in cases of forgery...................... 933
- expert testimony in cases of forgery. 934
- in cases of adultery and fornication.. 991
- how taken in legislative contest cases 1148
- certificate of marriage as............ 1556
- in divorce proceedings..........1597, 1598
- of mining records 1627
- official certificates of notaries public as 1667
- certified transcription of stenographer deemed *prima facie* correct...... 1765
- certificates of county surveyor as.... 1891
- official certificates as.............. 1904
- in trial for practicing medicine without authority.................. 1931
- certificates under seal of probate court 2005
- inventory and appraisement of estate of decedent, when............. 2055
- of wills and their probates........... 2243
- entry of clerk, shall be, of return..... 2348
- admission and inspection of documents......................2636-2641

Section
EVANSTON, CITY OF—*Continued.*
variance and failure of proof.....2642–2444
certificate of officers to affidavit in verification of pleadings......... 2494
offer to confess judgment, shall be given as........................ 2529
order of production of, in civil actions. 2553
who are competent witnesses........ 2588
privileged communications and acts.. 2589
when party to action shall not testify—exceptions 2590
opposite party may be compelled to testify.......................... 2591
laws of other states, how proven..... 2592
copies of public documents.......... 2593
depositions may be used as.......... 2613
2625–2627
newly discovered, ground for new trial 2652
deeds of officers shall be *prima facie*, when 2748
upon motion to discharge attachment 2911
on motions to vacate or modify injunctions 2933
in contest of will 3061, 3062
depositions taken in proceedings to perpetuate testimony 3071
of sale of realty for delinquent taxes . 3834
sufficiency of, to sustain certain indictments 3250,–3254
in criminal actions — general provisions 3288–3299
in justice's court, on motion to discharge attachment.............. 3558
presumptions in action to recover road tax 3885
EXAMINATION, PRELIMINARY,
general provisions..............3187–3197
EXCEPTIONS,
to decision of referee................ 2579
to report of master commissioners... 2585
defined 2645
when to be taken.................... 2646
manner of stating 2647
when to be entered on record 2648
when bill of exceptions, necessary—signing and filing................ 2649
immaterial exceptions disregarded... 2650
exceptions may be withdrawn....... 2651
in criminal actions—general provisions 3206–3310
in justice's court, in actions for forcible entry and detainer 3584
EXECUTION,
of realty conveyances within territory 8
of realty conveyances out of territory
11, 12, 14
against dissolved corporations, how satisfied 653
of process from probate courts...... 1972
sale of property under lien, after death of owner 2086
in probate court, against executor and administrator for failing to settle. 2172
in probate court, upon judgments against executors and administrators 2209
officers holding may be made parties, when 2404
clerk shall keep docket 2769

Section
EXECUTIONS—*Continued.*
exemptions from execution 2780–2791
procedure when chattels claimed by third person 2792–2794
may issue in proceedings in error, if restitution undertaking given.... 3140
of death penalty................3333–3345
on judgment in justice's court—how collected....................... 3501
in justice's court—civil actions...3504–3512
in justice's court, in criminal cases... 3650
how executed and directed.......... 2719
classified, and defined 2720
EXECUTIONS AGAINST PROPERTY,
property subject to levy and sale... 2721
when lien of a judgment attaches to property 2722
lien of judgment of supreme court. 2723
filing transcript of judgment, before justice 2724
lien of justice's judgment 2725
execution upon justice's judgment. 2726
when judgment becomes dormant.. 2727
the command and indorsement of executions.................. 2728
when no preference given to executions 2729
order in which property shall be taken 2730
bonds to officer for delivery of goods. 2731
notice of sale of goods and execution 2732
alias writs against unsold goods.... 2733
public and private sale of goods.... 2734
additional levy..................... 2735
appraisement of realty............ 2736
copy and appraisement shall be filed—sale 2737
effect of appraisement on lien—restrictions on sale........... 2738
property of officers shall be sold without valuation 2739
notice of sale of realty............ 2740
return on execution, and record thereof....................... 2741
duty of sheriff, when money made without sale of realty......... 2742
purchaser failing to pay, may be punished for contempt........ 2743
confirmation of sale—order for deed payment of proceeds 2744
conveyances by master commissioner...................... 2745
oaths—sheriff may act as commissioner...................... 2746
deed of officer—recital—execution, etc......................... 2747
effect of deed of officer............ 2748
printers' fees may be required in advance......................... 2749
place of sale—who can buy........ 2750
alias executions against lands 2751
separate levies, on separate parcels ofland 2752
succeeding officer may make deeds 2753
surplus shall be paid to defendants. 2754
reversal shall not affect sale—restitution....................... 2755
sale of wrong property—vacating satisfaction, of judgment...... 2758

Section

EXECUTIONS—Executions against Property—*Continued.*
- invalid sale—remedy of purchaser. 2756
- relief of officer, who levies on wrong property 2759
- right of co-defendant on sale of wrong property 2760
- when judgment loses preference 2761
- new appraisements for sale on execution 2762
- new appraisement and terms for sale on decree 2763
- return of execution 2764
- form of judgment against principal and surety—execution 2565
- appraisers' fees 2766
- execution to another county, may be returned by mail 2767
- money shall not be forwarded by mail 2768
- execution docket 2769
- index to execution docket 2770
- order of sale issued, when case not on trial docket 2771

Manner of Subjecting Corporate Stock to Execution and Attachment.
- shares of stock subject to levy 2772
- officer may demand statement of shares held by defendant 2773
- manner of making levy 2774
- sale of shares 2775
- certificate of sale—transfer on books of company 2776
- rights and privileges of purchasers. 2777
- shares bound from time of levy 2778
- pledge of shares as collateral not affected by levy 2779

Execution Against the Person,
- requisites of execution 2795
- causes for issuing 2796
- by whom allowed—affidavit 2797
- issuance by justice of the peace 2798
- when issued of course 2799
- discharge by delivery of property 2800
- prison bounds,—execution against property 2801
- death of debtor shall not satisfy judgment. 2802
- time of detention when arrested be- 2803
- fore judgment 2803
- when debtor may be discharged 2804

Privilege From Arrest—Prison Bounds,
- persons privileged from arrest 2805
- when and where arrests forbidden. 2806
- arrest for crime and serving summons, not restricted 2807
- notice to legislature of arrest of members and officers 2808
- discharge when wrongfully arrested 2809
- prison bounds prescribed 2810
- bond to obtain prison bounds 1811

Proceedings in Aid of,
- by civil action 2812
- by garnishment against railroad companies 2813–2819
- by examination of debtor 2820–2837
- by attachment 2838

EXECUTORS AND ADMINISTRATORS. *See personal representatives.*

Section

EXECUTORS AND ADMINISTRATORS—*Continued.*
- proceedings against 2204–2212
- venue of actions against 2420
- rights and bond of sole legatee 2239
- bond of, with the will annexed 2240
- compensation of 2244
- invalid sales of realty by 2757
- may list property of estate, for assessment 3778

Appointment and Removal,
- granting letters 1983
- where letters to be granted 1984
- when proceedings to be had 1985
- when ineligible as executor and administrator 1986
- to whom letters of administration granted 1987
- application to be made in ten days. 1988
- citation of person entitled to administration 1989
- to whom letters testamentary granted 1990
- co-executors shall give bonds 1991
- temporary administration 1992
- affidavit of applicant for letters 1993
- oath of administrator 1994
- oath of temporary administrator 1995
- oath of executor 1996
- bond of administrator 1997
- conditions of bond 1998
- bond of executor, etc 1999
- persons disqualified as sureties 2000
- precautions as to sureties 2001
- record and preservation of bonds 2002
- letters to be recorded 2003
- penalty for delivering letters without recording 2004
- certified copies of evidence 2005
- form of letters testamentary 2006
- form of letters of administration 2007
- form in other cases 2008
- finding will, revokes letters 2009
- setting aside will, revokes letters 2010
- marriage of executrix and administratrix 2011
- causes for revoking letters 2012
- insufficient bond—complaint 2013
- complaint by co-surety 2014
- new bond 2015
- effect of giving new bond 2016
- failure to give new bond revokes letters 2017
- additional security may be required 2018
- resignation of letters—procedure 2019
- surrender of letters on resignation—costs 2020
- powers of remaining executor, etc 2021
- letters *de bonis non* 2022
- delivery of property to succeeding executor, etc 2023
- successor to proceed against delinquents 2024
- court may enforce settlement 2025
- costs of citation 2026
- inventory of partnership estate 2027
- disposition of partnership property 2028
- bond of surviving partner 2029
- court's authority over surviving partner 2030

Section
EXECUTORS AND ADMINISTRATORS — Appointment and Refusal—*Continued.*
when executor, etc., of deceased partner to administer 2031
additional bond in such cases 2032
partnership property to be exhibited for appraisement 2033
citation for refusal to exhibit 2034
executors may give joint or separate bonds 2035
non-residents cannot administer ... 2036
Duties Respecting Money and Property,
collection of estate 2037
inventory and its requisites 2038
affidavit to inventory 2039
filing of inventory 2040
additional inventories 2041
witness to making inventory 2042
compensation of witnesses 2043
penalty for opening papers without witnesses 2044
concealing estate—citation 2045
refusal to answer—penalty 2046
trial of right of property 2047
delivery of effects enforced by attachment 2048
appraisements 2049
oath of appraiser 2050
form of appraisement 2051
filing of appraisements 2052
compensation of appraisers 2053
additional appraisements 2054
inventory and appraisements as evidence 2055
notice of appointment of executor, etc 2056
notices to unknown heirs 2057
executors, etc., shall collect debts and appear in actions 2058
actions commenced during life of decedent 2059
actions *ex-delicto* 2060
actions for slander, libel, etc., do not survive 2061
debtor appointed executor — debt not discharged 2062
absolute property of widow 2063
application of property by widow .. 2064
perishable goods shall be sold 2065
sale of personal estate to pay debts, etc 2066
assignment of notes and bonds 2067
notice of sale 2068
direction of testator not to sell 2069
sale when heirs unknown 2070
private sale 2071
clerk of public sale 2072
duties of clerk of sale 2073
sale bill to be filed 2074
real estate may be leased 2075
repair of buildings, etc 2076
court shall examine inventories, etc. 2077
indispensable labor may be procured 2078
further labor may be authorized ... 2079
interest received shall be assets 2080
court may require accounting of interest 2081

Section
EXECUTORS AND ADMINISTRATORS—Duties Respecting Money and Property—*Continued.*
money statement required 2082
when money may be loaned 2083
orders for speedy settlement of estate 2084
receipts and discharges 2085
property held on execution, disposal of 2086
application of proceeds 2087
widow's absolute property, and funeral expenses, etc., shall have precedence 2088
when part of personal estate ordered not sold 2089
disposition of same 2090
suspension of sale in vacation 2091
when court may order sale after suspension 2092
court may grant continuances 2093
Duties Respecting Sale of Realty,
sale of realty under will 2094
when purchase of realty may be completed 2095
when decedents interest shall be sold 2096
relinquishment of same 2097
relinquishment of school lands 2098
redemption of mortgaged property 2099
sale of equity of redemption 2100
sale and relinquishment by whom made 2101
petition for sale of realty to pay debts 2102
petition to show judgment liens ... 2103
application of proceeds of sale 2104
petition to state dates, etc., of judgment liens 2105
payment according to priority 2106
residue of proceeds to be assets 2107
pro rata payment of concurrent liens 2108
requisites of petition, for sale of realty 2109
when interested party may petition —notice 2110
duty of executor, etc., on receiving notice 2111
notice of application to sell 2112
order for sale 2113
when personalty reserved and realty sold 2114
appraisement of realty 2115
affidavit of appraisers 2116
notice of sale—publication 2117
place of sale 2118
restrictions upon sales 2119
report of sale 2120
new sale ordered if report not approved 2121
execution of deed upon approval of sale 2122
effect of deed 2123
petition for specific performance ... 2124
affidavit of petitioner 2125
notice to executor, etc 2126
order for specific performance 2127
execution of deed 2128

Section

EXECUTORS AND ADMINISTRATORS—Duties Respecting Sale of Realty—*Continued.*
- effect of deed 2129
- proceedings when executor, etc., interested 2130
- order for sale of realty without petition 2131

Allowance of Demands Against Estates,
- classification of demands 2131, 2132
- claims barred after one year 2133
- pending actions deemed exhibited demands 2134
- actions against executor deemed exhibited demands 2135
- manner of exhibiting demands 2136
- report of exhibited demands 2137
- demand may be established by action 2138
- jurisdiction of probate court over demands 2139
- affidavit of claimant 2140
- affidavit of claimant entitled to estate 2141
- when affidavit may be made by agent 2142
- notice of intention to establish demand 2143
- service of notice 2144
- waiver of notice 2145
- hearing by probate court 2146
- depositions 2147
- when court to determine demand 2148
- jury trial—rebate on claims not due 2149
- demand of executor, etc., how established 2150
- costs, by whom paid 2151
- court shall keep abstract of demands 2152
- classification of demands by court 2153
- indorsement on demand 2154
- order in which demands paid 2155
- costs in suits begun within six months 2156
- when executor, etc., shall appoint agent 2157
- notice to agent 2158
- improper allowance of demand—new trial 2159

Accounting and Final Settlement,
- record of accounts and settlements 2160
- semi-annual reports 2161
- estate docket 2162
- list of executors, etc., shall be posted 2163
- citation to delinquent executors, etc. 2164
- alias, citation 2165
- fine for delinquency 2166
- enforcement of settlement 2167
- manner of settling accounts 2168
- proof of disbursements 2169
- apportionment among creditors 2170
- further apportionment—preferred claims 2171
- failure to pay claims—execution 2172
- citation to sureties of executor, etc. 2173
- judgment against surety 2174
- notice of final settlement 2175
- when and how final settlement made 2176

Section

EXECUTORS AND ADMINISTRATORS—Accounting and Final Settlement—*Continued.*
- credits to be allowed on final settlements 2177

Distribution of Estate.
- distribution not to be made, within six months 2178
- when to be made within one year 2179
- order for distribution, 2180
- when personalty sold, and proceeds distributed 2181
- notice of sale 2182
- court shall settle claim of distributees 2183
- sale to distributees 2184
- distributee to refund share to pay debts 2185
- failure to refund—judgment 2186
- support of minor children 2187
- payment to widow out of rents 2188
- when estate delivered to widow 2189
- when distributee's share may be loaned 2190
- when share paid into county treasury 2191
- treasurer's receipt 2192
- certificate to distributee 2193
- disposition of unclaimed personalty 2194
- rule of descent, as to non-residents 2195
- distribution of non-resident's estate. 2196
- distribution when non-resident insolvent 2197
- resident creditors to be paid before estate transmitted 2198
- resident to be paid before foreign creditors 2199
- payment to foreign creditors 2200
- payments to be *pro rata* 2201
- disposition of residue 2202
- compensation of executors, etc 2203

Proceedings Against,
- creditor may ask investigation of accounts 2204
- issue and trial 2205
- judgment and costs 2206
- amount recoverable 2207
- action on bond for waste 2208
- execution—settlement not conclusive 2209
- proceeds of execution, how applied. 2210
- person injured may sue on bond 2211
- enforcement of orders of probate court 2212

Executory Contracts,
- when recorded, effect of—evidence. 25

EXEMPTIONS,
- of firemen from poll tax and jury service 1227-1232
- seal of notary public 1665
- homestead—value 2780
- when homestead exempt 2781
- homestead for decedent's family 2782
- of what homestead may consist 2783
- wife shall join in conveyance of homestead 2784
- sale of homestead, when worth over $1500 2785
- sale of homestead—proceeds exempt. 2786
- wearing apparel 2787

Section
EXEMPTIONS—*Continued.*
head of family, exemptions of 2788
exemptions when head of family dies, or deserts 2789
other exemptions—purchase money —*bona fide* residence 2790
fire saving apparatus 2791
what wages are exempt from execution 2831
property exempt from taxation . . 3771–3775
no property exempt from execution for delinquent road tax 3885
EXHIBITIONS,
license of—amount 1445, 1454
EXPERT TESTIMONY,
in cases of forgery.................. 934
EXPLOSIVES, STORAGE OF,
where, shall be stored 1950
powder magazine, how constructed . . 1951
penalties—nuisance 1952
EXPRESS TRUST,
action by trustee upon.............. 2384
EXTRADITION,
arrest, examination and commitment of fugitives from justice—notice. 3361–3363
FACT,
issues of, may be tried by jury........2362
when issue of, arises.............. 2516
how issues of, are tried............. 2517
when issues of, tried by court 2518
FAILURE,
to answer—judgment.............. 2667
FAIR ASSOCIATIONS,
may incorporate.................... 566
control and regulation of grounds ... 578
territorial aid to.................... 579
agricultural and stock associations . . 644–646
FALSE IMPRISONMENT,
defined—penalty 889
action for, shall not survive......... 2061
limitation upon actions for.......... 2372
FALSE PRETENSES,
obtaining credit and goods by . . . 1036, 1037
penalty for obtaining board or lodging by 1039
FAMILY,
exemptions of..................2788, 2789
FEES AND SALARIES,
of county treasurer for registering, etc., railroad bonds 557
of register of deeds in filing certificates of foreign corporations 602
of insurance commissioner.......... 634
of fish commissioners..........1234, 1246
of clerk of court, for indexing water rights......................... 1342
of witnesses in water right proceedings......................... 1357
of county surveyor for surveying ditches....................... 1365
of appraisers, etc., at sale of personalty under lien............... 1480
of register of deeds for recording miners' liens................... 1499
of register of deeds for recording mechanics' lien................ 1513
Laramie County, fees in special lien law 1522

Section
FEES AND SALARIES—*Continued.*
compensation of militia men........ 1616
of territorial inspector of coal mines 1647
of members of mining boards....... 1653
of attorney general................ 1685
of sheriff, for collecting money of delinquent collectors............ 1703
of *pro tempore* officers, appointed by governor.......................... 1727
of auditing committee, to settle with auditor and treasurer, appointed by secretary..................... 1728
of territorial auditor and treasurer... 1730
compensation of territorial librarian 1750
of territorial stenographer . . 1756, 1762, 1768
of penitentiary commissioners....... 1783
of register of deeds................. 1851
of special deputy sheriffs............ 1865
of fire wardens..................... 1923
of commissioners of pharmacy...... 1937
of witnesses to inventory of estate of decedent 2043
of appraisers of estate of decedent ... 2053
of executors and administrators...... 2203
of executors, etc 2244
of guardian 2273
of persons appointed to serve process 2358
of referees 2581
of master commissioners............ 2587
for taking depositions.............. 2631
on service of summons in another county 2700
of sheriff, when acting as master commissioner 2746
of appraisor of realty on execution . . 2766
of officers, in examination of judgment debtor 2837
of arbitrators 2961
of county treasurer, when ordered to assess and levy tax, in *mandamus* 3090
of trial justice of the peace when change granted 3448
of jurors in justice's court, in civil actions 3472
of justices in signing, etc., bill of exceptions 3486
of clerk of court for docketing bill of exceptions from justice's court . . 3486
of insane asylum building commission 3553
of capitol building commission...... 3674
of territorial treasurer for custody of capitol building, etc., funds..... 3690
of university commission 3696
of commissioner to locate university lands 3722
of trustees of blind, deaf and dumb institute 3731
of territorial treasurer, for care insane asylum building fund 3757
of superintendent of insane asylum . . 3764
of county treasurer for collection of delinquent taxes............... 3811
of county treasurer, for certificate of service at tax sale 3827
of county treasurer for tax deed..... 3831
of county commissioners, when sitting as board for uniform valuation of live stock....................... 3853
of road supervisor................. 3884

Section
FEES AND SALARIES—*Continued.*
of county surveyor, in surveying roads.......... 3887
of assessor for making school district assessment roll.......... 3965
of appraisers of stock condemned.... 4211
of territorial librarian acting as superintendent of weights and measures.......... 4214
of county assessor, acting as sealer of weights and measures.......... 4223
of register of deeds for recording timber brands.......... 1069
of messenger to bring returns of elections.......... 1130
of judges and clerks of elections..... 1158
of stock detectives.......... 4143
of sheep inspector.......... 4152
of county clerk, for recording description of estrays.......... 4171
of justice of the peace and appraisers of estrays.......... 4178
of arbitrators of value of stock killed by territory.......... 4209
of territorial veterinarian.......... 4211
of justice of the peace, for issuing
of cattle killed by territory...... 4211
summons, in arbitration of value
of appraisers in same proceeding.... 4211
FEES OF TERRITORIAL SECRETARY,
enumeration of fees allowed....... 1178
when fees may be charged........ 1179
secretary to furnish certified copy.. 1180
COMPENSATION AND FEES OF COUNTY OFFICERS,
limitation upon compensation of officers.......... 1181
salary and fees of sheriff.......... 1182
traveling expenses of sheriff...... 1183
salary and fees of clerk and *ex-officio* register.......... 1184
fees of clerk of supreme court..... 1185
fees of clerk of district court...... 1186
fees of probate judge.......... 1187
fees of county treasurer.......... 1188
salary and fees of justice of peace. 1189
fees of notaries public.......... 1190
compensation of assessor.......... 1191
fees of coroner.......... 1192
fees of surveyor.......... 1193
salary of county and prosecuting attorney.......... 1194
compensation of county commissioners.......... 1195
compensation of superintendent of schools.......... 1196
fees of triers.......... 1197
fees of constables.......... 1198
fees of witnesses.......... 1199
fees of physician testifying as expert.......... 1200
certificate of physicians' fees on *post mortem* examination.......... 1201
fees of interpreters.......... 1202
fees of jurors in justice's court..... 1203
justice may be paid a salary in lieu of certain fees.......... 1204
salary of justice for Fort Laramie precinct.......... 1295
mileage of jurors in district court.. 1207

Section
FEES AND SALARIES—COMPENSATION AND FEES OF COUNTY OFFICERS—*Continued.*
limitation upon fees of jurors in district court.......... 1206
per diem of jurors in district court. 1208
clerk of court shall issue certificates to juror.......... 1209
fees in criminal cases, by whom paid.......... 1210
clerks shall keep record of attendance of jurors and witnesses... 1211
clerks shall make statement of attendance to commissioners.... 1212
witnesses demanded at one time shall be named in one writ.... 1213
limitation on fees for attaching official seals.......... 1214
limitation upon allowances for mileage.......... 1215
no fees allowed for constructive service.......... 1216
limitation upon per diem compensation.......... 1217
court officers not allowed witnesses fees.......... 1218
fee list to be posted in certain offices.......... 1219
officers return to show fees claimed 1220
certified bill of costs to be made upon application.......... 1221
justice to certify costs in criminal cases.......... 1222
disposition of costs collected... 1223
"folio" defined.......... 1224
when and by whom fees payable... 1225
how population determined in regulating salaries, etc.......... 1226
FEIGNED ISSUES,
abolished.......... 2362
FELONIES,
defined.......... 866
FEMALES. *See women, married women.*
FEMALE SUFFRAGE,
the right of elective franchise and to hold office conferred.......... 1103
FERRY COMPANIES,
may incorporate—right and duties. 538–540
FICTIONS,
in pleadings, abolished.......... 2445
FICTITIOUS NAME,
when suit may be brought in........ 2505
FINDINGS,
general and special, in trial by court 2568
FINES AND PENALTIES, *See crimes.*
for register of deeds recording improperly executed instruments.. 29
when mortgagee fails to release mortgage.......... 32
for selling or removing mortgaged personalty without consent...... 90
for neglect of assignee.......... 110
for deceit or collusion of attorney.... 128
for embezzlement by attorney....... 139
for failure of treasurer of corporation to make statement.......... 525
for not keeping toll road in repair... 530
for refusing to pay toll.......... 531

Section

FINES AND PENALTIES — *Continued.*

for taking unlawful toll on bridges and ferries.................... 540
for not keeping bridges and ferries in good condition.............. 540
for damaging corporate property.... 545
power to impose by militia companies 577
for violating fair grounds regulations 646
for county commissioners of Sweetwater County unlawfully incurring indebtedness.............. 759
disposition of when collected upon indictments.................... 1000
disposition of..................... 1021
when fixed by courts............1060, 1061
disposition of....................... 1062
for violating fish laws...........1245, 1248
for violating game laws............. 1260
in *habeas corpus* proceedings........ 1273, 1289, 1305, 1306
for violating irrigation laws........ 1335-1337, 13471, 360
for failure to protect fish from ditches 1360
for permitting prisoners to have liquors 1374
for selling town site lots not platted. 1413
for violating license law.........1440, 1457
for gambling without license....1459, 1464
for not gambling on the square..... 1468
for failing to satisfy record, when mining lien satisfied............ 1501
for failure to satisfy record — mechanic's lien.................... 1515
Laramie County, lien law, fraudulent use of material................ 1539
for failure to record marriage certificates 1553
for intimidating miners............. 1635
for malicious destruction of mining property 1636
for conducting mining swindles 1637
for failing to protect live stock from mines......................... 1638
brushing fire-damp................. 1644
for negligence of miner 1646
for violating mining law............ 1659
for failure to deposit register of notaries public, with register of deeds......................... 1670
neglect of register of deeds to record certificates of notaries public, etc. 1671
for failure of collectors of territorial revenue to pay to treasurer...... 1699
for refusal of territorial treasurer to pay lawful warrant............. 1717
for malfeasance of territorial auditor or treasurer.................... 1718
for auditor issuing warrants to exceed appropriation and territorial treasurer paying money without warrants 1735
for improperly allowing accounts by county commissioners.......... 1806
for neglect of duty by county commissioners.................... 1812
for county treasurer failing to make settlement, etc.................. 1828
for malfeasance of county treasurer.. 1833
for neglect of duty by county treasurer 1839

Section

FINES AND PENALTIES — *Continued.*

for failure of county offices to keep offices open 1901
for extortion by officers............ 1905
for failure of justices and constables to pay over money............. 1909
for perjury by surety on official bond. 1915
for failure to obey orders of fire warden 1921, 1922
for practicing as physician without authority 1928
for practicing pharmacy without registration 1940
for selling railroad tickets without certificate..................... 1944
for railroads not plowing fire guards. 1948
for improper storage of explosives... 1952
for bringing pauper into county..... 1958
for opening papers of estate of decedent without witnesses......... 2044
for concealing estate of decedent..... 2046
for executor or administrator failing to settle....................... 2166
for suppressing or re-writing will.... 2245
for abandoning child 2284
for contempt of witness............. 2602
in enforcement of injunctions....... 2929
against officers.................2942–2948
for failure to comply with *mandamus*. 3088
for failure to deliver corporate property to trustees of dissolved corporation 3115
for failure to make proper return of jury qualifications of taxpayers.. 3378
for failing to draw jurors........... 3393
for sheriff corruptly summoning juror 3394
for refusing to testify in justice's court 3455
for contempt in justices' court...... 3591
for justice purchasing judgment..... 3611
for malfeasance of justice of the peace......................... 3664

ELECTION OFFENSES,
for disturbing elections.......... 1111
for negligence of judges and clerks of elections................. 1125
for neligence and malfeasance of officers of election........... 1131
for refusing to receive vote of elector 1132
for neglect and malfeasance of county clerk in election duties 1133
for mutilating or stealing poll books 1134
general provisions...........1159–1169

TAXATION,
for owner refusing to list property 3797
for neglect of duty of assessor..... 3800
for failure of county clerk to comply with the revenue laws.... 3805
for resisting collector of taxes..... 3814
for collector failing to make settlement 3820
for failure of county treasurer to make settlement with commissioners....................... 3837
for neglect of officers to comply with revenue laws........... 3838
for neglect by collector or assessor in the taxation of personalty.. 3848

ROADS AND HIGHWAYS,
for neglect of duty by viewers..... 3870

Section

FINES AND PENALTIES—Roads and Highways—*Continued.*
- for refusal to work out road tax.... 3878
- for obstructing road ditches....... 3881
- for malfeasance of road supervisor 3886
- for obstructing fords.............. 3890
- for obstructing roads or injuring bridges.................... 3893
- for unlawfully damming water.... 3895
- for maintaining unlawful booms.. 3901

Schools,
- for failure of county superintendent to make report............. 3915
- for detaining children from school 3950
- for failure of school district to make report................. 3958
- for refusal of school district officer to deliver records to successors 3974
- for failure to pay certain money to school fund................. 3977

Stock Laws,
- for branding at wrong time....... 4096
- for recording brand of another.... 4097
- for county clerk recording same brand twice................. 4098
- for fraudulently misbranding stock. 4099
- for failure to brand stock.......... 4100
- for misbranding or defacing brands 4101
- for violating brand law........... 4106
- for failure of foreman to care for cattle of unknown owner...... 4110
- for violating maverick law........ 4118
- for stock drovers failing to separate domestic stock from herd. 4119, 4124
- for drover keeping herd near ranch. 4120
- for driving cattle off their range... 4121
- for permitting stock to mix or trespass on land............... 4122
- for unlawfully driving off stock.... 4123
- for unlawfully butchering cattle... 4130
- for running cattle with dogs...... 4131
- for permitting stallions to run at large...................... 4135
- for unlawfully castrating stallions.. 4135
- for allowing bulls to run at large, in Albany County........... 4137
- stealing and embezzling or unlawfully purchasing live stock.... 4140
- for failure to report sheep brought into county................. 4146
- for failure to have sheep inspected. 4148
- for inspector making false report.. 4156
- for driving diseased sheep over another's land................ 4158
- for mixing sheep.................. 4159
- for allowing swine to run at large.. 4161
- for destroying fences............. 4193

Weights and Measures,
- for county commissioners refusing to, provide standard weights and measures................ 4225
- for failure of officer in complying with weights and measures law 4226
- for using incorrect weights........ 4227
- for banks failing to provide standard weights.................... 4229
- for violating weights and measures law....................... 4233

FIRE COMPANIES,
- may incorporate.................... 566

Section

FIRE COMPANIES—*Continued.*
- property of, exempt from taxation... 3771

FIRE GUARDS,
- railroads shall plow............... 1947

FIREMEN,
- Exemptions of,
  - certain firemen exempt from jury service.................... 1227
  - certain firemen exempt from poll tax—wives also exempt....... 1228
  - exempt firemen to be noted on assessment roll................ 1229
  - exemptions of firemen after five years service—certificate of exemption................... 1230
  - honorary firemen exempt—certificate of exemption............ 1231
  - city clerk to certify list of firemen to county clerk—county clerk to transmit certified list to assessor, etc................... 1232

FIRE SAVING APPARATUS,
- exemptions of..................... 2791

FIRE WARDENS,
- appointment—duties—powers, etc..... 1919–1923

FIRING WOODS OR PRAIRIE,
- penalty for.....................920–922

FISCAL YEAR,
- begins at 12 M., March 31........... 1731

FISH,
- ditch owners shall protect........... 1360
- Propagation and Protection of,
  - Fish commissioner — appointment and term of office............. 1233
  - salary of commissioner........... 1234
  - powers and duties of commissioner. 1235
  - further duties of commissioner.... 1236
  - report of commissioner........... 1237
  - obstructing passage of fish prohibited....................... 1238
  - fish-ways to be built in dams...... 1239
  - fishing near dams prohibited...... 1240
  - throwing harmful substances into streams prohibited........... 1241
  - fishing unlawful after notice that stream is stocked............ 1242
  - fishing with poisons, etc., unlawful. 1243
  - fishing between November and July unlawful.................. 1244
  - penalty for unlawful fishing...... 1245
  - county commissioners authorized to appropriate money for culture of fish................. 1246
  - ditch owners to prevent fish from entering ditch............... 1247
  - penalty for not preventing fish entering ditches.............. 1248

FLUME COMPANIES,
- may incorporate...................... 537
- condemnation proceedings by....... 548

FOLIO,
- term defined....................... 1224

FORCIBLE ENTRY AND DETAINER,
- Action for, in justice's court.....3574, 3589 3 4

FORDS,
- shall be unobstructed...........3890. 75 1276

FOREIGN CLAIMS,
- limitation of actions on.............. 1277

Section
FORECLOSURE,
of mortgages, judment on—procedure 2663, 2664
FOREIGN COUNTRIES,
acknowledgment of deeds in........ 14
FOREIGNERS. *See aliens.*
FORGERY AND COUNTERFEITING,
defined—penalties................923-935
FORNICATION,
defined—evidence.................. 991
keeping house for practice of—evidence.......................... 996
FOURTH OF JULY,
a legal holiday................. 1430
FRATERNATIES. *See secret societies.*
FRAUD,
limitations upon actions for......... 2371
ground for vacation of judgment..... 2701
no excuse for not answering in examination of judgment debtor... 2824
a ground of attachment............. 2869
how alleged in indictment........... 3250
FRAUDS AND PERJURIES, STATUTE OF,
certain agreements void if not in writing......................... 1249
contracts for sale of goods, when void.......................... 1250
FREMONT COUNTY,
cannot aid railroad companies....... 565
boundaries and county seat of....... 663
in third judicial district............. 839
population assumed at 5000, in determining salaries............... 1226
transfer of certain delinquent taxes in Sweetwater Co., to.........3854-3858
COURT HOUSE BONDS,
site for court house and jail........ 717
plans and specifications—advertising for proposals............. 718
award of contract................. 719
contractors to give bonds......... 720
authority to issue bonds.......... 721
terms of bonds.................... 722
registration of bonds............. 723
interest coupons.................. 724
tax levy.......................... 725
application of tax................ 726
retirement of bonds............... 727
time and place of payment......... 728
notite of intended payment........ 729
pledge of taxable property........ 730
preparation and sale of bonds..... 731
custody of bonds—treasurer's commission..................... 732
treasurer to give separate bond.... 733
expenses to be paid out of general fund....................... 734
sale of old jail building........... 735
construction of bond statute....... 736
FUGITIVES FROM JUSTICE,
arrest—examination and commitment 3361, 3362
notice of detention................. 3363
GAMBLING,
penalty for enticing minors......... 998
tracts declared void.............. 1001
alty for tavern-keepers permitting 1002
se of.....................1459, 1468

Section
GAMBLING—*Continued.*
prohibited upon railroad trains—penalties...................1040-1043
GAME, PROTECTION OF
when certain game may be killed... 1251
when ruffed grouse may be killed... 1252
when snipe, etc., may be killed...... 1254
when wild ducks, etc., may be killed. 1255
when unlawful to sell game......... 1256
unlawful to sell or transmit hides of game.......................... 1257
unlawful for railroad to ship game.. 1258
limit on game that may be killed in one day...................... 1259
penalty for violating game law...... 1260
disposition of fines.................. 1261
restrictions upon killing beaver...... 1262
game detectives and their duties.... 1263
GARNISHMENT,
affidavit for—service................ 2878
of public officers.................... 2879
answer and examination of garnishee 2880
transmission of answer of garnishee.. 2881
garnishee, how served.............. 2882
when property and garnishee bound. 2886
appearance and answer of garnishee.. 2895
payment of money by garnishee..... 2896
attachment of garnishee for contempt 2897
disposition of property in hands of garnishee.......................... 2898
action against garnishee............ 2899
costs in action, and substitution of parties.......................... 2900
judgment against, and discharge of, garnishee........................ 2901
in execution in justice's court....... 3508
in justice's court...............3541-3573
AGAINST RAILROAD COMPANIES,
affidavit for garnishment—notice to garnishee...................... 2813
service of notice................. 2814
examination of garnishee......... 2815
attachment against personal garnishee.......................... 2816
garnishee shall deliver money and property to officer............ 2817
sale of property.................. 2818
assignments of property, when void 2819
GEOLOGIST AND MINING ENGINEER,
creation of office—qualifications..... 1772
appointment—term of office......... 1773
to report on condition of mines..... 1774
to keep record of reports............ 1775
shall make annual report to governor 1776
GOATS. *See stock live.*
GOODS. *See personaliy.*
GOOD TEMPLARS,
may incorporate.................... 566
limitation upon property rights...... 568
officers shall receive no salary....... 574
GOPHERS,
bounty for destruction of........... 4235
GOVERNOR,
shall command militia companies.... 577
may assign judges................. 844
duty in offering rewards for apprehension of criminals.......1078, 1080
shall give certificate of election to territorial officers, etc........... 1131

Section

GOVERNOR—*Continued.*
  shall call special elections ... 1093
  shall issue writ of election, when vacancy in legislature ... 1173
  duty, when vacancy in office of delegate to congress ... 1174
  shall appoint fish commissioner ... 1233
  shall appoint water commissioners ... 1332
  duties and powers relative to the militia ... 1602—1616
  shall appoint territorial inspector of coal mines ... 1647
  may dismiss from office ... 1651
  shall appoint notary public ... 1661
  shall appoint commissioners of deeds. 1674
  shall appoint attorney general ... 1679
  may fill vacancy, in office of attorney general, when ... 1682
  shall appoint auditor and treasurer ... 1686
  shall approve bonds of auditor and treasurer ... 1687
  shall appoint territorial librarian ... 1736
  may order librarian to issue books ... 1742
  shall appoint territorial stenographer. 1755
  shall appoint insurance commissioner 1770
  shall appoint geologist and mining engineer ... 1773
  shall appoint penitentiary commissioners ... 1777
  shall notify penitentiary commissioners of pardons ... 1787
  shall appoint commissioners of pharmacy ... 1934
  may order *quo warranto* proceedings. 3094
  shall order execution of convict when restored to sound mind ... 3342
  may reprieve convicts ... 3364
  may grant pardons ... 3368–3370
  shall appoint capitol building commissioners ... 3666
  shall appoint university building commissioners ... 3676
  shall approve separate bond of treasurer ... 3691
  shall appoint trustees of university ... 3703
  shall appoint commissioner to locate university lands ... 3719, 3720
  shall appoint board of trustees of blind, deaf and dumb institute ... 3726
  shall appoint insane asylum building commission ... 3740
  shall be a member of territorial board of equalization ... 3804, 3839
  shall appoint veterinarian ... 4199
  may restrict importation of live stock. 4205
  shall approve vouchers of veterinarian ... 4211
  shall inspect Revised Statutes of Wyoming ... 4281
GRAND JURY,
  shall inspect jails ... 1367
  general proceedings of ... 3221–3241
GRANTOR AND GRANTEE,
  which shall pay taxes ... 3850
GRAVE ROBBING,
  penalty for ... 1029
GREEN RIVER, TOWN OF,
  county seat of Sweetwater County ... 668
GROUND SQUIRRELS,
  bounty for destruction of ... 4235

Section

GUARDIAN AND WARD. *See personal representatives.*
  wards cannot vote ... 1104
  guardian of lunatics and drunkards ... 2291–2331
  parents, natural guardians ... 2250
  appointment of guardian ... 2251
  guardian of estate ... 2252
  what parent shall be appointed ... 2253
  selection by minor ... 2254
  bond and oath of guardian ... 2255
  inventory of property ... 2256
  guardian's authority over a minor ... 2257
  general duties of guardians ... 2258
  mortgage and sale of realty ... 2259
  petition to sell, etc.—notice ... 2260
  continuance of hearing ... 2261
  court may direct reference ... 2262
  additional bonds, required before sale 2263
  costs of proceeding, by whom paid ... 2264
  sale to be approved—execution of deed ... 2265
  rules governing sales ... 2266
  action on guardian's bond ... 2267
  annual accounting required ... 2268
  delivery of effects on change of guardians ... 2269
  property of non-resident minor ... 2270
  appointment of foreign guardian ... 2271
  bond of foreign guardian ... 2272
  compensation of guardian ... 2273
  minors and insane, actions by ... 2387
  defense of insane person ... 2389
  defense of ward, *ad litem*, duties and compensation ... 2389, 2390
  defense of infant—*ad litem* ... 2392, 2393
  venue of actions against ... 2420
  answer of guardian ... 2465
  guardian may verify pleadings ... 2490
  invalid sales of realty by guardian ... 2757
  guardian may act for ward in partition—foreign guardian ... 2978, 2979
  listing property of ward, for assessment ... 3778
  redemption of realty of ward, sold at tax sale ... 3829
  guardians shall send wards to school 3950
GUIDE BOARDS,
  shall be erected ... 3889
HABEAS CORPUS,
  proceedings may be had before any judge ... 844
  requisites of petition ... 1264
  petition to be verified ... 1265
  by whom writ may be allowed ... 1266
  when allowed by probate judge ... 1267
  application to be made to the nearest judge ... 1268
  if petition insufficient writ to be refused ... 1269
  allowance and form of writ ... 1270
  by whom writ issued ... 1271
  reasons to be assigned for disallowance ... 1272
  penalty for wrongful disallowance ... 1273
  when writ issued without application. 1274
  by whom writ served ... 1275
  manner of service ... 1276
  service may be made on person having custody of plaintiff ... 1277

Section

- HABEAS CORPUS—*Continued.*
  - when defendant to be arrested 1278
  - power of person making arrest 1279
  - when plaintiff to be taken in custody by officer 1280
  - order for summary production of plaintiff 1281
  - order for defendant's arrest 1282
  - service of order of arrest 1283
  - examination of defendants 1284
  - errors in writ to be disregarded 1285
  - identity of defendant presumed 1286
  - defendant to appear and answer 1287
  - defendent shall produce plaintiff 1288
  - failure to obey writ—penalty 1289
  - service of attachment 1290
  - prosecuting attorney to be notified 1291
  - answer what to contain 1292
  - answer must show transfer of plaintiff 1923
  - copy of process to be annexed to answer 1294
  - plaintiff may demur or reply—trial—by court 1295
  - when evidence before magistrate may be reviewed 1296
  - affidavits may be used in evidence 1297
  - attendance of witnesses may be compelled 1298
  - certain proceedings not reviewable 1299
  - when plaintiff to be discharged 1300
  - errors in commitments to be disregarded 1301
  - plaintiff may be admitted to bail 1302
  - custody of plaintiff, *pendente lite* 1303
  - presence of plaintiff at trial, how waived 1304
  - disobeying order of discharge penalty 1305
  - eluding service of writ—penalty 1306
  - officer to furnish *mittimus* on request 1307
  - papers to be filed—journal entry 1308
  - fees and costs not to be advanced 1309
  - for discharge of persons wrongfully arrested in civil actions 2809
- HABITUAL DRUNKARDS. *See drunkards, habitual. See lunatics and drunkards.*
  - becoming, cause for revocation of letters of administration 2012
- HALF-BLOOD,
  - kindred of, shall inherit 2222
- HANGING,
  - general provisions 3333–3345
- HEALTH, PUBLIC,
  - regulations concerning 1004–1008
- HEIRS. *See descent and distribution.*
  - the word, not necessary to convey fee simple 34
  - notice to unknown of settlement of estate 2057
  - sale of estate when unknown 2070
  - adopted children shall be 2286
  - constructive service upon unknown 2440
  - may compel completion of real contracts 3008
- HEREDITAMENTS. *See realty.*
- HIDES,
  - when unlawful to sell or transport 1257
  - restrictions on selling, etc. 4126–4130

Section

- HIGH SCHOOL,
  - establishment of 3946
- HIGHWAYS,
  - penalty for obstructing, and polluting 1003
- HISTORICAL SOCIETIES,
  - may incorporate 566
- HOGS. *See stock, live.*
- HOLIDAYS, LEGAL. *See legal holidays.*
- HOMESTEADS,
  - exempt from attachments and executions 2780–2786
  - wife shall join in conveyance of 2784
  - tree exemptions upon 3775
  - homestead entries subject to taxation, when 3776
  - restrictions upon selling, for delinquent taxes 3824
- HOMICIDE. *See murder.*
- HORSES. *See stock, live.*
- HOSPITALS. *See poor and paupers.*
  - societies to maintain, may incorporate 566
  - limitation upon property rights 568
  - officers to receive no salary 574
- HOTELS,
  - shall post hotel law 1038
  - penalty for obtaining board or lodging at, by false representations 1039
  - lien upon baggage 1481
- HOUSE BREAKING,
  - defined 900
- HOUSEHOLD GOODS,
  - exempt from taxation—limitation 3771
- HUSBAND,
  - not liable for ante-nuptial debts 1563
  - when liable for torts of wife 1565
  - cannot convey realty of wife 1566
  - restraint and control of, in divorce proceedings 1577, 1583
  - not necessary to join with wife 2385
  - may be joined with wife in action 2401
  - privileged communications of 2589
  - on death of wife, entitled to her homestead interest 2782
- HYGIENE,
  - shall be taught in public schools 3969–3972
- IDIOTS. *See insanity; see guardian; see lunatics and drunkards.*
  - cannot commit crime 859
- ILLEGITIMACY,
  - when children deemed illegitimate 1591
- ILLEGITIMATE CHILDREN,
  - shall inherit, when 2227
  - rule of descent from 2230
- IMPRISONMENT. *See crimes. See false imprisonment.*
  - in justice's court, in civil action, forbidden 3612
  - of judgment debtors 2795
- IMPROVEMENTS,
  - occupying claimants shall be paid for when 2992
- INCEST,
  - defined—penalty 994
- INCESTUOUS MARRIAGES. *See marriages incestuous.*
- INDEX,
  - clerk of court shall prepare 2348
  - of judgments, shall be prepared by clerk 2686

Section
INDEX—*Continued.*
to execution docket 2770
INDIANS,
penalty for giving liquor to 986
INDICTMENT,
sufficiency of for perjury 938
how found, indorsed, presented, etc.. 3225, 3236, 3239
general provisions..............3242–3257
pleas to........................3258–3275
description of neat cattle in.......... 4141
INFANTS. *See minors.*
under ten years of age cannot commit crime.......................... 857
INFORMATION,
in justice's court 3621–3623
INFORMER,
shall pay costs, when............... 2692
INHERITANCE. *See descent and distribution.*
INITIALS,
actions may be brought, in name designated by..................... 2399
INJUNCTION,
from working mine to protect surface owners....................... 1631
to suspend enforcement of judgment. 2708
defined 2919
causes for......................... 2920
when and by whom granted........ 2921
notice of application for............ 2922
notice to party who answers........ 2923
undertaking required.............. 2924
order of injunction, and notice thereof 2925
service of injunction, granted during litigation................. 2926
when injunction operates........... 2927
second application for injunction.... 2928
enforcement of.................... 2929
additional surety, when required.... 2930
affidavits used on hearing........... 2931
motion to vacate or modify......... 2932
evidence on hearing of motion...... 2933
defendant may obtain.............. 2934
to enjoin illegal tax levy and assessment.....................3054–3056
in aid of *quo warranto* proceeding, against banking association..3118–3120
INQUESTS, *See coroner.*
of accidents in mines.............. 1650
to determine insanity of convicts3340, 3341
INSANE ASYLUM,
creation, and location of asylum, at Evanston 3739
building commission—appointment, etc.......................... 3740
site shall be obtained by donation.... 3741
plans and specifications............ 3742
advertising for bids—awarding contracts—contractor's bond........ 3743
oath of commissioners............. 3744
superintendent of building.......... 3745
authority to issue bonds............ 3746
terms of bonds................... 3747
execution and registration of bonds.. 3748
interest coupons.................. 3749
preparation and sale of bonds....... 3750
bonds shall be executed upon written request......................... 3751
compensation of commissioners..... 3753

Section
INSANE ASYLUM—*Continued.*
issue of bonds—custody and disbursement of funds................ 3752
tax levy to pay interest............ 3754
redemption of bonds and tax levy, therefor 3755
manner of levying and collecting tax 3756
treasurer's commission............ 3757
separate bond required of treasurer.. 3758
time and place of paying bonds...... 3759
restrictions upon commissioners.... 3760
time for completion of building..... 3761
accounts and reports of commission.. 3762
construction of law................ 3763
superintendent of asylum........... 3764
qualifications and duties............ 3764
when asylum shall be opened to receive patients................. 3765
paying patients shall be admitted.... 3766
report of commission to legislature 3767
INSANITY. *See lunatics and drunkards.*
as effecting guilt of accused......... 858
no trial or punishment while defendant is insane.................. 865
insane person cannot vote........... 1104
insane person cannot hold office..... 1171
at time of marriage, renders marriage void 1567
petitions to annual.............1593, 1594
care of pauper insane............... 1964
cause for revocation of letters of administration 2012
saving to insane persons in limitation of actions..................2367, 2375
insane persons shall bring actions by guardian or next friend......... 2387
insane persons shall be defended by guardian....................... 2389
determination of................... 2391
answer of guardian of insane person. 2465
insane person cannot testify......... 2588
limitation on time for vacating judgment after disability removed ... 2710
revivor of judgment, after removal of disability..................... 2715
guardian may act for insane person in partition—foreign guardian.2978, 2979
inquest to determine, of criminals... 3340, 3341
redemption of realty of insane persons sold at tax sale 3829
INSPECTION,
of books and documents 2638, 2639
INSPECTOR OF COAL MINES, TERRITORIAL. *See coal mines.*
INSTITUTE, TEACHERS.' *See teachers' institute.*
INSTRUCTIONS,
shall be given by court in civil actions................ 2553
further, if jury disagrees 2557
to jury in finding special verdicts.... 2564
INSTRUMENTS,
copies of written, shall be filed with pleadings 2472
abbreviated pleadings on, for payment of money...................... 2473
INSURANCE COMMISSIONER. *See insurance corporations.*
creation of office................... 1769

Section

- INSURANCE COMMISSIONER—*Continued.*
  - appointment and term of office...... 1770
  - qualifications and duties............ 1771
- INSURANCE COMPANIES.
  - venue of actions against........2415, 2419
  - service upon........................ 2432
  - taxation of.......................... 3788
- INSURANCE CORPORATIONS,
  - incorporation and regulation of...603—642
  - service on, in justice's court......... 3427
- INTELLIGENCE OFFICES,
  - license of.......................... 1446
- INTEREST,
  - any rate valid if in writing.......... 1310
  - rate in absence of contract.......... 1311
  - interest on judgments............... 1312
  - twelve per centum in enumerated cases.......................... 1313
  - rate presumed to be by the year..... 1314
  - interest on public warrants.......... 1315
  - rate on demands not enumerated.... 1316
  - on delinquent taxes................. 3819
  - on realty sold for delinquent taxes... 3829
  - on delinquent taxes due territory.... 3837
- INTERPLEADER,
  - affidavit of person making—proceedings......................... 2405
  - in favor of officer 2406, 2407
- INTERPRETATION,
  - of words........................... 2337
- INTERPRETERS,
  - fees of............................ 1202
  - appointment of.................... 3410
  - fees, how paid..................... 3411
- INTERROGATORIES,
  - may be annexed to pleadings—shall be answered 2486
  - answer to.......................... 2487
  - enforcement of answers to.......... 2488
- INTIMIDATION,
  - an excuse for committing crime..... 864
  - of mine owners—penalty 1635
- INVENTORY,
  - of personalty of estate of decedent... 2055
  - of property of minor ward 2256
  - of estates of lunatics and drunkards.. 2301–2303
  - in attachment in justice's court.... .. 3549
- IOWA HOSPITAL FOR INSANE,
  - maintenance of insane confined at... 1965
- IRRELEVANT MATTER,
  - may be stricken from pleading, on motion 2474
- IRRIGATION. *See ditch companies.*
  - RIGHTS TO USE OF WATER AND RIGHTS OF WAY FOR DITCHES,
    - rights of riparian owners 1317
    - when landowner entitled to right of way damages........... 1318
    - extent of right of way 1319
    - petition to commissioners—notice of appointing appraisers 1320
    - proceedings of appraisers—payment of assessment 1321
    - owner may raise water from stream 1322
    - ditches to be kept in repair 1323
    - vested rights preserved........... 1324
    - ditches shall be bridged 1325

Section

- IRRIGATION—RIGHTS TO USE OF WATER, ETC.—*Continued.*
  - when commissioners shall bridge ditches—expenses 1326
  - claim for right of way, may be arbitrated..................... 1327
  - appointment and proceedings of arbitrators.................. 1328
  - appeal to commissioners.......... 1329
  - if no appeal taken, award is final.. 1330
  - APPROPRIATION OF WATER—PROCEDURE,
    - irrigation districts defined, and numbered........................ 1331
    - appointment of water commissioners....... 1332
    - oath of commissioners............ 1333
    - duties of commissioners 1334
    - molesting head-gates, etc.—penalty —commissioners may make arrests...................... 1335
    - compensation of commissioners.... 1336
    - employment of assistant commissioners—compensation 1337
    - commissioners to perform duties only when necessary 1338
    - jurisdiction of courts to settle water right 1339
    - statement of existing water rights to be filed, etc................ 1340
    - filing and indexing statements..... 1341
    - fees of clerk of court............. 1342
    - statement of contemplated ditch—appropriation of water—construction to begin in sixty days 1343
    - all streams open to appropriation.. 1344
    - manner of determining priority of water rights in district court... 1345
    - notice of trial of rights of water... 1346
    - destroying water improvements—penalty..................... 1347
    - appeal to supreme court—notice—undertaking.............. ... 1348
    - service of notice in case of appeal.. 1349
    - transcript to be filed in six months. 1350
    - decree of supreme court........... 1351
    - effect of failing to offer evidence of priority of water right 1352
    - effect of failure to file statement of water right 1353
    - decision may be reviewed in district court 1354
    - rights of persons constructing reservoirs.......................... 1355
    - liability of owners of reservoirs.... 1356
    - fees of witnesses................. 1357
    - rights of incorporated companies to take water.................. 1358
    - water commissioners to prevent waste of water 1359
    - ditch owners to protect fish........ 1360
    - vested rights preserved........... 1361
  - OFFICIAL SURVEY OF DITCHES,
    - surveyor to measure ditches....... 1362
    - deputy surveyor—ditch certificate. 1363
    - filing and verification of certificate. 1364
    - compensation of surveyor......... 1365
- IRON MINES,
  - liens upon......................... 1502

Section

ISRAELITES,
exempt from arrest in civil actions, when.... 2805
ISSUES,
feigned, abolished.... 2362
defined and classified.... 2515
when an issue of fact arises.... 2516
how tried.... 2517
certain issues of fact shall be tried by court.... 2518
when made up in term, action triable 2522
JAILOR. *See offenses against public justice.*
JAILS,
sheriff shall have custody of.... 1867
when kept by coroner.... 1877
every county shall have a jail.... 1366
inspection of, by grand jury.... 1367
sheriff to keep jail—precautions when jail insecure.... 1368
restriction on jail expenses.... 1369
record of process relating to prisoners 1370
sheriff to care for prisoners.... 1371
sheriff to visit jail and cause it to be cleaned.... 1372
spirituous liquors not permitted in jail 1373
penalty for allowing prisoners liquor 1374
United States prisoners—custody of.. 1375
removal of prisoners in case of fire.. 1376
sheriff and prisoners not subject to arrest.... 1377
refractory prisoners—punishment... 1378
juvenile prisoners to be kept in separate apartments.... 1379
jail register to be kept by sheriff.... 1380
procedure in building jail.... 1381
awarding contract.... 1382
security required of bidder.... 1383
payment for jail.... 1384
special jail tax.... 1385
shall be examined by grand jury.... 3238
JOHNSON COUNTY,
cannot aid railroad companies.... 565
boundaries of....664, 670
population assumed at 5,000, in determing salaries.... 1226
deputy sheriffs in.... 1862
school district No. 1 bonds (1886)4020–4033
COURT HOUSE BONDS,
location and site of court house.... 763
plans and specifications.... 764
advertising for proposals.... 765
awarding contract.... 766
contractor shall give bonds.... 767
authority to issue bonds.... 768
terms of bonds.... 769
registration of bonds.... 770
interest coupons.... 771
county bond tax.... 772
application of tax.... 773
redemption of bonds,.... 774
time and place of payment.... 775
notice of intended payment.... 776
when interest ceases.... 777
pledge of taxable property.... 778
sale of bonds.... 779
custody of funds,—treasurer's commission.... 780
separate bond of treasurer.... 781
preliminary expenses. how paid... 782

Section

JOHNSON COUNTY—COURT HOUSE BONDS—*Continued.*
construction of bonding statute.... 783
purchase of new site and sale of old one.... 784
JOINDER,
causes of action that may be joined.. 2308
must have same place of trial, and affect same parties.... 2409
actions for foreclosure and money judgment, may be joined.... 2410
of plaintiffs.... 2394
of defendants.... 2395
unwilling parties may be made defendants.... 2396
when parties numerous one may appear for all.... 2397
of parties severally liable.... 2398
JOINT OWNERSHIP,
how alleged in indictment.... 3251
JOURNAL,
what shall be entered upon.... 2678
JUDGE. *See court. See district court. See offenses against public justice.*
may take acknowledgments.... 8
duties in condemnation proceedings by private corporatious.... 548
duties in examination of insurance corporations.... 630
shall act only in his own district—exceptions....844, 846
may act as trustee to sell town site lots.... 1388, 1394, 1396, 1397
may solemnize marriage—duties. 1548–1553
certificate of, of services of stenographer.... 1760, 1764
may appoint special stenographer, when.... 1767
shall sentence convicts to territorial prison.... 1780
may order temporary confinement of lunatics and drunkards.... 2330
depositions may be taken before.... 2617
attending court, privileged from arrest in civil actions.... 2805
change of, in criminal actions.... 3405
JUDGE OF PROBATE. *See probate court.*
JUDICIAL NOTICE,
matters of which courts will take, need not be pleaded.... 2470
JUDGMENT, AGAINST OFFICERS. *See amercement.*
JUDGMENT, ENFORCEMENT OF. *See execution.*
JUDGMENT,
rate of interest upon.... 1312
against counties, how paid.... 1798
of probate court, how enforced.... 1972
in probate court, against surety of executor or administrator.... 2175
in probate court, for failure of distributee to refund.... 2186
in district court, against executor or administrator for waste.... 2206
foreign, limitations of actions of.... 2369
how pleaded and proven.... 2477
by default, for failure to answer interrogatories.... 2488
on default in civil action.... 2520

Section

JUDGMENT—*Continued.*
- in case of tender before suit.....2524, 2525
- confession of, before suit........2526–2530
- by court, in cases of submission...... 2572
- of referee......................... 2576
- lien of.......................2722, 2723
- in trial of right of property, in execution 2793
- enforcement of, by attachment, when 2838
- against garnishee.................. 2901
- in cases of occupying claimants 2998
- in action to complete real contracts.. 3005, 3007
- in contest of will 3060
- in *mandamus*..................3082, 3085
- in *quo warranto* proceedings against officer 3098
- in criminal actions............3320, 3322
- in justice's court, in actions for forcible entry and detainer......3581–3583
- in justice's court—civil actions...3474–3485
- Judgment in General,
  - judgment and order defined....... 2657
  - for and against whom judgment may be rendered............ 2658
  - may be against defendant at different times.................... 2659
  - dismissal of action, for failure to prosecute................... 2660
  - when action may be dismissed, without prejudice.............. 2661
  - dismissal shall not affect counter-claims and set-offs........... 2662
  - judgment on foreclosure.......... 2663
  - procedure when mortgaged property in more than one county.. 2664
  - judgment on real contracts—effect. 2665
  - judgments against married women. 2666
- Judgment upon Failure to Answer and by Confession,
  - upon failure to answer—assessment of damages................. 2667
  - by confession in open court....... 2668
  - form of judgment by confession... 2669
  - enforcement of judgment by confession...................... 2670
  - warrant of attorney shall be produced......................... 2671
  - execution of warrant of attorney by prisoner.................. 2672
- Manner of Giving and Entering,
  - to be entered by clerk upon verdict 2673
  - when court shall direct judgment.. 2674
  - judgment *non obstante veredicto*... 2675
  - judgment upon counter-claim and set-off 2676
  - rights of infants preserved........ 2677
  - journal entries.................. 2678
  - complete record necessary unless waived 2679
  - when record made up and signed.. 2680
  - from what complete record made.. 2681
  - court shall cause record to be completed 2682
  - transcription of judicial records.... 2683
  - when records need not be made complete..................... 2684
  - record in dismissed action........ 2685
  - index to judgments............... 2686

Section

JUDGMENT—*Continued.*
- For Costs—Enforcement,
  - security for costs, when required—cash deposit................. 2687
  - dismissal of actions for failure to give security.................. 2688
  - security required if plaintiff becomes non-resident........... 2689
  - additional security................ 2690
  - judgment against surety for costs.. 2691
  - when informer shall pay costs..... 2692
  - costs when defendant disclaims.... 2693
  - costs of motions, continuances, etc. 2694
  - when defendant shall pay costs.... 2695
  - when plaintiff shall not recover costs....................... 2696
  - costs against plaintiff............ 2697
  - when costs are in discretion or court 2698
  - costs, where several actions brought on same instrument.......... 2699
  - fees on summons to another county 2700
- New Trial and Other Relief After Judgment,
  - modification of judgment after term 2701
  - opening of judgment on service by publication.................. 2702
  - *bona fide* purchasers not to be affected........................ 2703
  - proceedings to correct mistakes and omissions in obtaining judgment................... 2704
  - vacation of judgment.........2705–2707
  - injunction to suspend enforcement 2708
  - suspension of premature judgment 2709
  - limitation on time, in proceedings to vacate.................... 2710
  - mistake in not suing for full amount..................... 2711
  - proceedings in supreme and probate courts.................. 2712
- Revivor and New Parties to Judgment,
  - proceedings against parties not summoned, or unknown...... 2713
  - revivor of dormant judgments..... 2714
  - limitation on time for proceedings 2715
  - revivor, when parties die after judgment................... 2716
  - judgment against partnerships.... 2717
  - sureties on in certain bonds....... 2718

JUDGMENT DEBTOR, EXAMINATION OF,
- examination after return of execution unsatisfied 2820
- examination before return of execution 2821
- order of arrest, and proceedings thereon....................... 2822
- examination of debtor of judgment debtor—property bound 2823
- fraud, no excuse for not answering.. 2824
- reference by judge 2825
- continuance of proceedings 2826
- attendance of parties and witnesses compelled 2827
- examination before referee 2828
- punishment for disobedience of orders 2829
- debtor must pay execution against creditor 2830

Section

JUDGMENT DEBTOR, EXAMINATION OF—*Continued.*
  property may be applied on execution—exempt wages 2831
  appointment of receiver 2832
  liability of sheriff—receiver's undertaking 2833
  debtor's equitable, or other interest in realty may be sold 2834
  order of judge to be in writing and filed 2635
  fees of probate judge 2836
  fees of officers—collection 2837

JURISDICTION,
  of district courts in county boundary line disputes.................. 674
  of district court in apportionment of indebtedness between old and new counties 680
  of probate judge as justice of the peace 1823
  of probate court over demands against estate 2139
  district court, of juvenile delinquents. 2332, 2335
  of probate judge in adoption 2274
  in civil actions, obtained by summons, publication, or appearance..2422–2443
  want of, a cause of demurrer....2449, 2456
  when obtained in attachment 2908
  of district court in action for relief against illegal taxes and assessments 3053
  in error......................3126–3151
  of grand jury 3225
  upon change of venue 3407
  of justice court, in civil actions..3415–3420
  of justices in replevin...........3522–3528
  of justice, in action for forcible entry and detainer 3574
  of constable....................3613–3618
  of justice, in criminal actions........ 3620

JURORS AND JURIES,
  penalty for taking bribes............. 962
  fees of, in justice's court........... 1203
  limitation upon fees of, in district court 1206
  mileage of, in district courts 1207
  per diem of, in district courts 1208
  exemption of firemen from service as 1227–1232
  in coroner's inquests 1879
  in probate courts 1980
  in probate court, to determine demands against estate 2149
  may try issues of fact in civil actions 2362
  limit of amount of damages awarded by, in actions for death........ 2364 *b*
  may determine fact of insanity 2391
  shall try issues of fact............. 2517
  trial by, how waived deposit of fee for 2567
  misconduct of, ground for new trial.. 2652
  in trial of right of property, in executions...................... 2792
  attending court, privileged from arrest in civil actions 2805
  in trial of action of occupying claimants......................2995, 2997
  who are competent jurors........... 3376
  when jurors may be excused........ 3377

Section

JURORS AND JURIES—*Continued.*
  assessor shall ascertain jury qualifications of taxpayers 3378
  selection of two hundred persons.... 3379
  restriction upon selection of commissioners 3380
  certified lists of jurors 3381
  clerk shall deposit names in "jury box." 3382
  clerk shall draw names of jurors 3383
  notice of drawing jurors............ 3384
  witnesses to drawing jurors 3385
  adjournment of drawing............ 3386
  drawing to proceed if witnesses attend 3387
  how drawing of names conducted.... 3388
  order for summoning jurors......... 3389
  manner of summoning jurors........ 3390
  attendance of juror required........ 3391
  return of officer 3392
  contempt of court by jurors and officers 3393
  sheriff corruptly summoning juror—penalty 3394
  manner of completing panels........ 3395
  manner of forming jury for trial..... 3396
  in contest of will 3060
  in criminal actions—general provisions 3279–3287, 3314–3318
  in justice's court, in civil actions.3464–3468
  in justice's court, in actions for forcible entry and detainer 3582
  in justice's court in criminal proceedings 3631–3644

TRIAL BY JURY,
  law governing trial............... 2548
  challenges 2549
  causes for challenge.............. 2550
  trial of challenge................ 2551
  oath of jury—their custody........ 2552
  mode of conducting a trial........ 2553
  view of place or property by jury.. 2554
  deliberation and custody of jury... 2555
  admonition to jurors when permittted to separate........... 2556
  further instructions, if jury disagree 2557
  discharge of jury before verdict... 2558
  re-trial of cause.................. 2559
  return of verdict 2560
  further deliberation—polling jury . 2561
  discharge of jury—reforming verdict 2562
  general and special verdicts....... 2563
  when jury may render general or special verdict............... 2564
  special finding to control general verdict 2565
  jury must assess amount of recovery 2566

JUS TERTII. *See third persons.*

JUSTICES OF SUPREME COURT,
  shall not practice law.............. 833
  may order librarian to issue books... 1742
  may administer oaths............... 3412

JUSTICE OF THE PEACE. *See offenses against public justice.*
  may take acknowledgments......... 8
  jurisdiction of, in cases of illegal voting, bribing electors, and disturbing religious worship........... 1033
  may fix fines...................... 1061

Section
JUSTICES OF THE PEACE—*Continued.*
jurisdiction in timber cases 1065
shall assist in canvassing returns of elections of counties 1127
when elected 1083
vacancy in office of, how filled 1175
salary and fees of 1189
may be paid salary in lieu of certain fees 1204
salary of, for Fort Larimie precinct .. 1205
shall certify costs in criminal cases .. 1222
duties in enforcement of liens upon personalty 1472, 1473–1477
may solemnize marriages—duties 1548–1553
when, may protest paper 1673
probate judge shall be *ex-officio* 1820
jurisdiction of probate judges 1823
when, may act as coroner 1887
election—oath and bond 1899
residence and office shall be in precinct 1900
shall pay over money 1909
jurisdiction in cases of abandonment 2285
shall make application for guardianship of lunatics and drunkards .. 3290
may order temporary confinement of lunatics and drunkards 3330
abatement of actions against for misconduct, by death 2531
depositions may be taken before 2617
depositions may be used before 2625
revivor of judgments of 2714
transcripts of judgments of 2724
lien of judgments of 2725
execution upon judgment of 2726
property of, may be sold under execution without valuation 2739
shall try right of property, in execution 2792
may issue execution, against person of judgment debtor 2798
shall issue subpœna for witnesses before arbitrators 2952
proceedings to stay execution, on proceedings in error 3142
jurisdiction in proceeding to prevent crime 3156–3167
issuing search warrants 3168
may issue process for arrest 3180
jurisdiction in preliminary examination—criminal docket 3187–3198
power to take bail 3199–3220
shall witness drawing of jurors, when 3384
may administer oaths 3412
duties in appraisement of estrays 4174–4178
shall swear arbitrators, of damages by breachy animals 4185
fees for issuing summons for condemnation of stock 4211
JURISDICTION IN CIVIL CASES,
territorial extent of jurisdiction 3415
general jurisdiction and authority . 3416
cases in which jurisdiction denied .. 3417
place of office—when process issued 3418
shall not have office with attorney . 3419
application of general law to proceedings before justice 3420

Section
JUSTICES OF THE PEACE, CIVIL PROCEDURE,
ACTIONS, HOW COMMENCED,
docket and entries therein 3421
actions, how commenced 3422
by whom actions may be brought. 2423
style and requisites of summons ... 3424
service and return of summons 3425
service on corporations 3426
service on insurance and foreign corporations 3427
service upon minor over fourteen years 3428
special appointment to serve process 3429
procedure when part of defendants not served 3430
APPEARANCE AND PLEADINGS,
time for appearance 3431
pleadings and amendments 3432
forming issue, in action on instrument or account 3433
when continuance granted—costs .. 3434
proceeding when title, etc., to land, comes in question 3435
what may be subject to set-off ... 3436
in whose action brought—set-off against assignee 3437
action by trustee—set-off 3438
judgment in case of set-off 3439
judgment for defendant on set-off. 3440
CHANGE OF PLACE OF TRIAL,
cause of change—when granted ... 3441
costs of change 3442
when change granted, time of trial shall be fixed 3443
transfer of transcript and papers ... 3444
but one change shall be granted .. 3445
when another justice shall be called to try the case 3446
proceedings on change of justice .. 3447
fee of trial justice when change granted 3448
MEANS OF SECURING WITNESSES,
justice may issue subpœnas 3449
service of subpœna 3450
when fees not allowed for serving subpœnas 3451
cost when witness not examined .. 3452
when justice may issue attachment, for witness 3453
execution of attachments—fees 3454
penalty for refusing to testify 3455
liability of witness to parties, for failure to testify 3456
DEPOSITIONS AND COMMISSIONS,
procedure in taking depositions 3457
depositions of witnesses unable to attend trial 3458
commission to take evidence out of territory 3459
manner of issuing and executing commissions—continuances .. 3460
TRIAL,
justice to try case, if no jury demanded 3461
trial on voluntary appearance of parties 3462
trial on default 3463

Section

JUSTICES OF THE PEACE, CIVIL PROCEDURE—Trial—*Continued*

proceedings upon trial by jury—
oath of jury and witnesses ... 3464
discharge of jury on failure to agree 3465
juror failing to appear subject to fine ... 3466
constables shall attend trial, etc ... 3467
jury to attend on continuance ... 3468
trial of competency of juror ... 3469
when new trial granted ... 3570
notice on motion for new trial ... 3471
fees of jurors ... 3472
bill of exceptions, how taken ... 3473

Entering and Setting Aside Judgments,
dismissal of action without prejudice ... 3474
proceedings when either party fails to appear ... 3475
when and how judgment on default set aside ... 3476
when judgment shall be entered ... 3477
proceedings when claim exceeds jurisdictional amount ... 3478
offer to confess judgment in specified sum, and its effect ... 3479

Setting Off One Judgment Against Another,
when and by whom set-off allowed. 3480
procedure to obtain set-off ... 3481
record of allowance or rejection—executions ... 3482

Judgment by Confession,
when justice may enter ... 3483
prerequisites to entering judgment. 3484
confession shall be filed—costs ... 3485

Appeals,
manner of taking appeal—bill of exceptions ... 3486
when undertaking required ... 3487
affidavit on appeal—costs ... 3488
transcript—when appeal shall be heard ... 3489
when justice shall recall execution. 3490
docketing appeal—order of trial ... 3491
proceedings on failure to perfect appeal ... 3492
irregularity in taking appeal—correction ... 3493
limitation on right of appeal ... 3494
when appellant shall pay costs and attorney fee ... 3495
liability of surety on undertaking .. 3496
succeeding justice shall make transcript ... 3497
allowance of appeal may be enforced by attachment ... 3498
return of justice may be amended .. 3499
judgment on affirmance of justice's decision ... 3500
execution on such judgment, how collected ... 3501
remedy of surety on payment of judgment ... 3502
restitution on reversal of judgment 3503

Executions,
how and when issued ... 3504
what execution must contain ... 3505
indorsements on execution ... 3506

Section

JUSTICE OF THE PEACE, CIVIL PROCEDURE — Executions—*Continued.*

renewal of execution ... 3507
service upon garnishee ... 3508
officers shall receive money on execution ... 3509
rights and remedies of bail ... 3510
execution against joint debtors ... 3511
plaintiff may sue surety on undertaking ... 3512

Stay of Execution,
undertaking to stay execution ... 3513
time for which stay granted ... 3514
cases in which stay not granted ... 3515
execution recalled when stay granted ... 3516
when execution issued notwithstanding stay ... 3517
further undertaking may be given. 3518

Sale on Execution,
notice of sale ... 3519
manner of conducting sale—return 3520
officer shall not purchase at sale ... 3521

Replevin,
jurisdiction of justices ... 3522
affidavit for replevin ... 3523
summons in replevin ... 3524
service of writ ... 3525
undertaking required—custody of property—damages ... 3526
defendent may except to sureties—justification ... 3527
jurisdiction of justice fixed by affidavit ... 3528
trial when plaintiff fails to prosecute ... 3529
finding for defendant and its requisites ... 3530
judgment for defendant shall be in alternative ... 3531
finding for plaintiff—judgment—damages ... 3532
proceedings when property not taken ... 3533
authority of officers in executing writ ... 3534
proceedings when property concealed ... 3535
wrongful issuance of writ—penalty 3536
liability of officer for wrongful delivery of property ... 3537

Trial of the Right of Property,
notice and time of trial ... 3538
finding for claimant—costs—restoration of property ... 3539
finding against claimant—judgment for costs ... 3540

Attachment and Garnishment,
causes for attachment—affidavit ... 3541
undertaking required ... 3542
requisites of writ ... 3543
what property may be attached ... 3544
manner of executing writ ... 3545
service upon garnishee ... 3546
liability of garnishee ... 3547
examination of garnishee and defendant ... 3548
sale of perishable property—collection from garnishee ... 3550

Section

JUSTICE OF THE PEACE, CIVIL PROCEDURE — ATTACHMENT AND GARNISHMENT—*Continued.*
inventory and appraisement....... 3549
proceedings when property claimed by third party.............. 3551
satisfaction of judgment out of attached property.............. 3552
collection of balance—return of surplus...................... 3553
when plaintiff may prosecute undertaking...................... 3554
return of property, etc., on judgment for defendant........... 3555
condition of undertaking—motion to discharge attachment....... 3557
evidence on motion to discharge.. 3558
discharge of writ................ 3559
undertaking to discharge attachment 3559
return of officer................ 3560
answer of garnishee.............. 3561
garnishee may pay over money—costs........................ 3562
failure to appear—contempt....... 3563
court may order garnishee to pay over money.................. 3564
action by plaintiff against garnishee 5565
final judgment against garnishee.. 3566
attachment writ and summons.... 3567
pro rata payment of different attachments.................. 3568
officer first attaching shall have custody, etc................ 3569
notice of attachment by publication 3570
form of notice................... 3571
time and proof of publication...... 3572
proceedings upon judgment by default....................... 3573
FORCIBLE ENTRY AND DETAINER,
jurisdiction of justice............ 3574
who liable to action.............. 3575
notice to quit premises........... 3576
summons—service and return..... 3577
proceedings when defendant fails to appear.................... 3578
proceedings when defendant appears....................... 3579
limitation on granting continuance 3580
trial by justice, and judgment..... 3581
trial by jury—verdict............ 3582
judgment upon verdict........... 3583
exceptions....................... 3584
writ of restitution............... 3585
execution of writ................ 3586
return of writ, on stay of proceedings....................... 3587
appeal.......................... 3588
this action no bar to ejectment.... 3589
CONTEMPT,
when justice may punish......... 3590
limitation upon punishment....... 3591
defendant must be heard...... ... 3592
summary proceedings when defendant present.............. 3593
requisites of warrant of commitment...................... 3594
contempt by witness............. 3595
order committing witness......... 3596
adjournment until witness testifies. 3597
disobedience of subpœna—penalty 3598

Section

JUSTICE OF THE PEACE, CIVIL PROCEDURE—*Continued.*
ARBITRATION,
selection of arbitrators—trial—award...................... 3599
appeal from decision on motion to set aside award................ 3600
proceedings in district court when award set aside............... 3601
affirmance in district court........ 3602
GENERAL PROVISIONS,
execution for costs............... 3603
disposition of records, etc., on vacancy in justice's office...... 3604
unlawful detention of records—citation....................... 3605
delivery of records enforced by commitment.................. 3606
neglect to pay over money—penalty...................... 3607
justice's court shall be public...... 3608
delivery of records, etc., to successor in office.................. 3609
power of justice having lawful possession of records........... 3610
justice shall not purchase judgment —penalty.................... 3611
imprisonment for debt and sale of exempt property forbidden.... 3612
constable's jurisdiction........... 3613
constable shall execute process, etc 3614
power of constable—return of process........................ 3615
indorsement on process.......... 3616
when return of "not found" permissible..................... 3617
constable shall arrest criminals, etc 3618
sureties shall justify.............. 3619
CRIMINAL JURISDICTION AND PROCEDURE.
jurisdiction of justice............ 3620
criminal actions commenced by information.................... 3621
requisites of information.......... 3622
form of information.............. 3623
warrant for arrest................ 3624
execution of warrants............ 3625
arraignment..................... 3626
pleas by defendant............... 3627
trial by justice when jury not demanded..................... 3628
affidavit for change of venue...... 3629
proceedings upon change of venue. 3630
jury trial may be had if demanded. 3631
manner of selecting jury.......... 3632
venire for jury.................. 3633
service of venire................. 3634
completing jury—challenges...... 3635
challenge for cause.............. 3636
proceedings when officer fails to return venire................ 3637
six jurors shall constitute jury..... 3638
oath of jury..................... 3639
trial........................... 3640
retirement of jury,—oath of bailiff. 3641
verdict of jury,................. 5642
jury shall be kept together........ 3643
second trial when jury disagree.... 3644
judgment on conviction,.......... 3645
commitment when fine not paid... 3646

Section

JUSTICE OF THE PEACE, CIVIL PROCEDURE—Criminal Jurisdiction, Etc.—*Continued.*
  justice may sentence prisoner to hard labor, etc.............. 3647
  acquittal entitles defendant to discharge 3648
  when prosecuting witness liable for costs...................... 3649
  execution of judgment........... 3650
  disposition of fines.............. 3651
  payment of fine after commitment. 3652
  appeal to district court............. 3653
  defendant shall be informed of his right to appeal................ 3654
  undertaking an appeal........... 3655
  qualifications of bail 3656
  by whom bail taken.............. 3657
  witnesses shall be recognized and transcript filed............... 3658
  trial in district court.............. 3659
  when appeal may be dismissed 3660
  enforcement of judgment in district court 3661
  appeal to supreme court.......... 3662
  enforcement of judgment in supreme court................. 3663
  malfeasance of justice,—penalty... 3664

JUSTIFICATION,
  of sureties........................... 2342
  of bail in civil actions.............. 2854
  in replevin............................ 3029
  in replevin, in justice's court........ 3527
  in justice's court................... 3619

JUVENILE DELINQUENTS,
  shall be kept separate in county jail.. 1379
  convicted juveniles to be sent to house of refuge................. 2332
  disobedient juveniles shall be confined 2333
  approval of accounts by penitentiary commissioners—superintendent's report....................... 2334
  costs and fees to be paid as in criminal cases.................. 2335
  penitentiary commissioners shall contract for care of juveniles....... 2336

KIDNAPING,
  defined—punishment............890, 891

KNIGHTS OF LABOR. *See secret societies.*

KNIGHTS OF PYTHIAS. *See secret societies.*

LABOR,
  convict—general provisions.....3371–3375

LANDER, TOWN OF,
  county seat of Fremont County 663
  site of court house................. 717

LANDLORD AND TENANT,
  no implied tenancy, except by sufferance.......................... 1386
  leases shall be renewed in writing... 1387

LAND. *See realty.*
  fraudulently selling twice.......... 1046
  university—general provisions for appropriation of lands for......... 3724
  Possessory Rights on Public Lands,
    possessory rights to one hundred and sixty acres protected...... 1414
    possessory rights may be transferred, etc................... 1415

Section

LAND—Possessory Rights on Public Lands—*Continued.*
    action of infringement of possessory right.................... 1416
    extent of possessory rights........ 1417
    paramount right conceded to the United States 1418
    mining, oil and soda claims not affected........................ 1419
  Disposal of Public Town Site Lands,
    corporate authorities to sell town site lands 1388
    to whom conveyance made........ 1389
    notice of receipt of patent......... 1390
    statement of occupying claimant... 1391
    settlement of adverse claims 1492
    appeal to supreme court.......... 1393
    patentee to make deeds........... 1394
    limitation upon acquirement of lots 1395
    sale of unclaimed lots............ 1396
    original trustee to continue to act.. 1397
    when successor shall assume trust. 1398
    trustees may act through attorney. 1399
  Platting and Dedicating Town Sites,
    town sites and additions to be platted 1400
    requisites of plats................ 1401
    recording of plat, deemed a dedication of streets................ 1402
    streets and alleys may be vacated.. 1405
    how plat vacated................. 1404
    plat may be partially vacated...... 1405
    effect of partial vacation on streets. 1406
    how vacated lots conveyed and assessed 1407
    plat to be marked, "vacated"...... 1408
    county clerk to make plat, if owners refuse,—costs............. 1409
    clerk to plat land when description uncertain 1410
    conveyance presumed, to warrant accurate description—platting. 1411
    plats heretofore made not affected. 1412
    unlawful to sell lots not platted.... 1413

LARAMIE, CITY OF,
  aid to railroads passing through...... 563
  county seat of Albany County....... 658
  shall be site of university building... 3675, 3677, 3698
  corporate limits and name........... 203
  general corporate powers 204
  powers exercised by mayor and council............................. 205
  division of city into wards.......... 206
  police justices—appointment and jurisdiction 207
  mayor and councilmen—term of office—qualification............... 208
  annual elections.................... 208
  vacancies in office, how filled........ 208
  qualifications of electors—paying poll tax 209
  regular meetings of council.......... 210
  duties of mayor—his casting vote...... 211
  elective and appointive officers....... 212
  mayor to sign orders, drafts and deeds 213
  approval and veto of mayor 214
  advisory powers of mayor........... 215

Section
LARAMIE, CITY OF—*Continued.*
  special meetings of council.......... 216
  officers shall exhibit accounts, etc., to mayor........................ 217
  jurisdiction of mayor............... 218
  vacancy in office of mayor, how filled 219
  mayor may grant pardons.......... 220
  general corporate powers........... 221
  enumeration of specific corporate powers........................ 222
  assessment book—its form.......... 223
  duties of assessor.................. 224
  penalty for refusing to list property.. 225
  oath of property holder............ 226
  oath of assessor..................... 227
  failure of assessor to perform duties—penalty........................ 228
  board of equalization................ 229
  hearing grievances.................. 230
  abstract of assessment roll........... 231
  marshal shall collect tax............ 232
  penalty for non-payment of taxes.... 233
  duty of marshal in distraining goods. 234
  delinquent taxes—penalty.......... 235
  final settlement of marshal.......... 236
  collection of delinquent taxes........ 237
  tax sale........................... 238
  style of ordinances.................. 239
  clerk may administer oath to claimants......................... 240
  disposition of fines and penalties..... 241
  fees of police justices............... 242
  punishment by fine and imprisonment 243
  appeals from police court to district court......................... 244
  contempt in police court............ 245
  marshal's power as chief of police... 246
  power of policemen................ 247
  policemen subject to orders of mayor and marshal................... 248
  marshal subject to orders of mayor.. 249
  compensation of officers........... 251
  misbehavior of officers—penalty..... 252
  removal of mayor.................. 252
  city is successor to former municipal government.................... 253
  lands subject to municipal tax designated....................... 254
  vested rights preserved............ 255
  WATER WORKS,
    control of........................ 256
    protection and extension of system. 257
    compromising with adverse claimants........................ 258
  SEWERAGE SYSTEM,
    issue of bonds.................... 259
    call for special bond election...... 260
    manner of conducting election 261
    when bonds shall be issued........ 262
    registration of bonds............. 263
    annual bond tax—sinking fund.... 264
    payment of bonds................. 265
    investment of funds............. 266
    cancellation of bonds............. 267
    custody of funds—bond of treasurer 269
LARAMIE COUNTY,
  boundaries of..................... 665
  county seat at Cheyenne.......... 666
  in first judicial district.............. 839
  salary of attorney for.............. 1194

Section
LARAMIE COUNTY—*Continued.*
  payment of certain licenses to cities, and towns 1438
  general mechanic's lien law does not apply to 1516
  special mechanic's lien law for ..1517–1540
  tax levy for poor house in........... 1963
  legalization of acts of Chas. F. Miller as judge in.................... 1982
  warrants of, when, receivable for taxes...........................3815, 3816
  order of paying warrants of........ .. 3816
  widths of roads in 3868
LARCENY,
  defined—penalties 901–906
  joinder of other offenses in indictment for....................... 3253
  unlawfully driving off stock deemed. 4123
LAW,
  issues of, shall be tried by court..... 2517
  of other states and countries, how proven...................... 2592
  arrangement of acts, etc., in session laws.......................... 1420
  to be divided into chapters.......... 1421
  table of contents—index and side notes......................... 1422
  secretary to distribute laws......... 1423
  county clerk to make requisition for laws........................ 1424
  who entitled to laws................ 1425
  officer to deliver laws to successor... 1426
  legislators entitled to laws........... 1427
  disposition of laws by secretary...... 1428
  officers entitled to Compiled Laws.. 1429
LEASEHOLD ESTATES. *See realty.*
LEASE,
  when deemed a conveyance......... 24
  renewal of shall be in writing....... 1387
  of entailed and life estates.......... 3017
LEGAL HOLIDAYS,
  enumeration of.................... 1430
LEGALIZATION,
  of certain official acts and instruments affecting realty.................56–69
LEGATEE,
  sole, bond of...................... 2239
LEGISLATIVE ASSEMBLY,
  bribery of members of—penalties..939, 940
  conduct of contests of election of... 1136, 1144
  members of, how chosen........... 1083
  vacancy in, how filled.............. 1173
  time of convening................. 1431
  qualification of members............ 1432
  members entitled to laws.......1427, 1429
  appeal from auditor to.............. 1710
  appointment of committee to settle with auditor and treasurer...1722–1728
  shall cause settlement to be made with former auditor and treasurer 1723–1726
  members of, privileged from arrest.. 2805, 2806, 2808
  may order *quo warranto* proceedings. 3094
LEGITIMACY,
  of children in divorce proceedings... 1588–1591
LIBEL,
  defined.......................... 979

Section
LIBEL—*Continued.*
action for, shall not survive 2061
limitations upon actions for 2372
how pleaded 2480
answer and proof in action for 2481
abatement of actions for, by death 2531
LIBRARIAN, TERRITORIAL,
duties in distributing laws 1428
appointment and term of office 1736
to have custody of library 1737
to receive and label books 1738
to receipt for books, and keep a record thereof 1739
library rules—authority of librarian 1740
exchange of books 1741
how books issued—return of same 1742
librarian to report to legislature 1743
to issue circular asking contributions of mineral specimens 1744
disposition of specimens 1745
circular, what to contain 1746
cabinet to be open for inspection 1747
library hours 1748
bond of librarian 1749
compensation of librarian 1750
library to be insured 1751
officers to deposit books in library 1752
sale of Compiled Laws 1753
proceeds of sale, how applied 1754
shall be *ex-officio* superintendent of of public instruction 3905
shall distribute Revised Statutes 4281
shall act as superintendent of weights and measures—duties 4214–4233
LIBRARIES,
societies to maintain, may incorporate 566
LIBRARIES, COUNTY,
when library tax to be levied—amount 684
tax, how levied and collected 685
trustees, appointment and bonds—purchase of books 686
donations—location of library—librarian 687
libraries to be free 688
trustees to report to commissioners—books, use of 689
LICENSES,
for marriage 1544
COUNTY LICENSES,
sheriff shall collect licenses 1433
county clerk shall prepare licenses 1434
county clerk shall keep abstract of licenses 1435
treasurer to make report of license receipts 1436
license money to go to general fund—exceptions 1437
certain licenses in Laramie County payable to cities 1438
auctioneers, peddlers, etc., to pay license 1439
penalty for peddling, etc., without license 1440
penalty for selling goods, etc., without license 1441
liquor license and penalties 1442
place of sale to be named in liquor licenses 1443
liquor dealer to keep orderly house 1444

Section
LICENSES — COUNTY LICENSES — *Continued.*
exhibition and theater licenses 1445
pawnbroker and intelligence office licenses 1446
disposition of fines 1447
officer failing to report fines 1448
informers may testify 1449
penalties may be recovered by action 1450
sheriff to return unpaid licenses 1451
amount of auctioneer's and peddler's license 1452
amount of liquor license 1453
amount of exhibition license 1454
penalty for selling liquor without license 1455
payable in money 3816
drummer's license 1456
penalty for selling without drummer's license 1457
peddler's, what constitutes 1458
GAMING LICENSES,
penalty for gaming without a license 1459
how license obtained 1460
billiard table licenses 1461
requisites and effect of licenses 1462
amount of license—disposition of money 1463
penalty for permitting gaming without license 1464
restrictions on cities and towns 1465
criminating evidence 1466
what games may be licensed 1467
penalty for unfair playing 1468
LIENS,
of attorney for services 138
not affected by dissolution of corporation 651
of judgment on revivor 2714
of judgments 2722, 2723
of justices' judgments 2725
for delinquent taxes 3819
of taxes upon personalty 3844
on animals causing damage 4188, 4189
ON PERSONALTY,
who entitled to lien 1469
agistor's and stable keeper's lien 1470
common carriers and warehousemen 1471
appointment of appraisers 1472
oath and duties of appraisers 1473
notice of sale—sale and application of proceeds 1474
requisites of sale 1475
lien holders may purchase 1476
adjournment—bill of sale 1477
right of action preserved 1478
clerk and crier of sale 1479
fees of appraisers, etc. 1480
hotel keeper's lien 1481
chattel mortgages subject to liens 1482
timber liens to be paid *pro rata* 1483
identification of property not required in timber lien 1484
when lien not to affect *bona fide* purchasers 1485
MINERS' LIENS,
lien for labor 1486

Section
LIENS—MINERS' LIENS—*Continued.*
lien for materials.................. 1487
enforcement of lien 1488
notice of lien 1489
who entitled to lien 1490
against whom lien holds.......... 1491
time of bringing action 1492
lien on oil lands.................... 1493
claim of sub-contractor, or laborer 1494
liability of owner after notice 1495
enforcement of claim by action ... 1496
procedure in obtaining lien 1497
action to enforce lien 1498
fees for recording 1499
entry of satisfaction 1500
penalty for failing to satisfy....... 1501
iron mines, subject to lien law.... 1502
where action is to be brought...... 1503
notice to non-residents by publication 1504
service may be had in any county. 1505
oil wells, subject to lien law....... 1506
MECHANICS AND BUILDERS,
who may have lien............... 1507
notice to owner by sub-contractor.. 1508
owner to satisfy contractor........ 1509
liability of owner.................. 1510
procedure to obtain lien 1511
action to enforce lien............. 1512
fees for recording............... 1513
entry of satisfaction 1514
failure to satisfy — penalty........ 1515
Laramie County not included in general mechanic's lien law... 1516
LARAMIE COUNTY, SPECIAL LIEN LAW FOR,
who entitled to, and extent of lien. 1517
extent of lien 1518
priority of lien 1519
lien upon leasehold and improvements...................... 1529
filing and requisites of lien........ 1521
abstract of liens—fees 1522
priority of lien 1523
pleadings and practice........... 1524
parties to action — constructive service 1525
trial—judgment—attorney's fees... 1526
judgment on default............. 1527
judgment on constructive service.. 1528
judgment on personal service..... 1529
execution—homestead not exempt. 1530
duration of lien 1531
entry of satisfaction.............. 1532
failure to satisfy—penalty 1533
notice of intended filing of lien.... 1534
"contractor" defined — liability of owners 1535
"owner" and "proprietor" defined —infants and married women. 1536
liens to be concurrent 1537
lien for improvement made by tenant 1538
penalty for fraudulent use of material 1539
application of special lien law to Laramie County only......... 1540
LIFE ESTATES,
actions for sale of 3009–3019

Section
LIMITATION. *See time.*
of claims against estates............ 2133
of actions for death............... 2364*b*
special, saved...................... 2365
in real actions...................... 2360
saving to persons under disability in real actions...................... 2367
general limitations................ 2368
in actions on specialties, contracts in writing, foreign claims. judgments........................ 2369
in actions on verbal contracts, and statutory liabilities............. 2370
in actions for, trespass, replevin, fraud, torts.......................... 2371
in actions for libel, slander, assault and battery, malicious prosecution, false imprisonment, statutory penalty..................... 2372
in actions upon official bonds, and statutory undertakings.......... 3373
in actions for relief, generally....... 2374
saving to persons under disability.... 2375
when action deemed commenced.... 2376
attempt equivalent to commencement 2377
do not run when debtor out of territory or concealed.............. 2378
if cause of action barred elsewhere, barred here................... 2379
saving of, in case of reversal or death. 2380
partial payment or written acknowledgment renews............... 2381
upon revivor of actions.........2543, 2544
upon opening judgments, by persons attaining majority............. 2677
for proceedings to vacate or modify judgments 2710
on time for revivor of judgments..... 2715
when judgments become dormant... 2727
of time of preference of judgment... 2761
in contest of will................. 3065
upon bringing *quo warranto* proceedings.......................3121, 3122
for proceeding in errror............ 3141
of writ of error in criminal actions... 3354
upon right of appeal from justice's court......................... 3494
upon actions to avoid sales of realty for delinquent taxes.............. 3835
for redemption of realty, sold for delinquent taxes................. 3839
LIQUOR,
unlawful to sell on Sunday or election day......................... 1034
shall not be permitted in jails....... 1373
license for sale of.............1442, 1444
amount of license for sale of......... 1453
LIS PENDENS,
general provisions................. 2442
when realty is in other counties..... 2443
a cause of demurrer............2449, 2456
LIVE STOCK. *See stock, live.*
LODE CLAIMS. *See mines and mining.*
LODGINGS,
penalty for obtaining by false representations........................ 1039
LOGS,
restrictions concerning.1064, 1071, 1073, 1074

Section

LOTTERIES,
  promoting, prohibited 1017
  selling tickets prohibited 1018
  advertising, prohibited 1049
LYNX,
  bounty for destruction of 4234
LUNATICS AND DRUNKARDS,
  application for inquisition 2287
  court may act in vacation 2288
  person may be brought in court 2289
  certain officers shall make application 2290
  appointment of guardian 2291
  costs, by whom paid 2292
  when applicant shall pay costs 2293
  new trial may be granted 2294
  bunds of guardians 2295
  additional bond may be required 2296
  custody of bonds—copy as evidence 2297
  notice of guardian's appointment 2298
  custody and support of ward 2299
  guardian shall take possession of effects 2300
  inventory and its requisites 2301
  additional inventory 2302
  witnesses to inventory 2303
  appraisement required 2304
  allowance and payment of demands 2305
  general duties of guardian 2306
  court may control wards, persons and estate 2307
  petition to sell or mortgage real estate 2308
  requisites of petition 2309
  order of sale 2310
  terms of sale shall be fixed by court 2311
  notice of sale 2312
  sale and reports 2313
  verification of report 2314
  execution of deed 2315
  sale may be set aside—new sale 2316
  mortgage and lease to be approved 2317
  effect of conveyance, etc 2318
  annual accounting required 2319
  ward's contracts void 3320
  ward exempt from certain process 2321
  process to be served on guardian 2322
  inquiring concerning restoration of ward 2323
  if ward restored, guardian shall settle 2324
  settlement on death of ward 2325
  removal of guardian 2326
  settlement by removed guardian 2327
  guardian controlled by court 2328
  when ward shall be confined 2329
  expenses of confinement 3330
  county may recover expenses 2331
MAINTENANCE,
  defined—penalty 964
MALICIOUS MISCHIEF,
  defined—penalties 1056–1074
  destruction of mining property 1636
MALICIOUS PROSECUTION,
  limitations upon actions for 2372
  abatement of actions for, by death 2531
MANSLAUGHTER,
  defined—penalties 872–874
MANUFACTURERS,
  defined, for purposes of taxation 3794
MANDAMUS,
  defined 3073
  by what courts issued 3074

Section

MANDAMUS—*Continued.*
  application for writ 3075
  writ not issued if adequate remedy at law 3076
  when writ shall be peremptory, and when alternative 3077
  journal entry, of allowance of writ 3078
  issuance and service of writ 3079
  defendant may answer or demur 3080
  reply and demurrer 3081
  judgment on default 3082
  effect and construction of pleadings 3083
  issues of fact, how tried 3084
  judgment for plaintiff—damages 3085
  rccovery a bar to other actions 3086
  costs against relator 3087
  penalty for failure to comply with *mandamus* 3088
  when county treasurer shall levy an assessed tax 3089
  duties and compensation of treasurer 3090
  power of court not limited 3091
MARRIAGE,
  inesestuous—penalty 992, 993
  shall extinguish powers of executrix and administratrix 2011
  considered a civil contract 1541
  marriageable age defined 1542
  void marriages shall not be solemnized 1543
  license necessary 1544
  parent's consent necessary to minor's marriage 1545
  clerk to require evidence of competency 1546
  when license to be refused 1547
  who may solemnize marriages 1548
  form of ceremony 1549
  certificate of marriage 1550
  return of marriages to county clerks 1551
  record of marriages 1552
  offenses relating to marriages 1553
  effect of solemnization by unauthorized person 1554
  marriage according to rites of religious sects valid 1555
  certificate as evidence 1556
  foreign marriages 1557
  void marriages defined 1567
  marriages without legal consent voidable 1568
  petition to annul a marriage 1569
  petition to affirm marriage 1570
  shall not abate action 2401
  privileged communications in 2589
  MARRIAGE AS A STATUS,
    separate estate of married women 1558
    contracting powers of married women 1559
    married women may sue and be sued 1560
    married women may make will 1561
    married women may carry on business, etc 1562
    husband not liable for ante-nuptial debts 1563
    wife's estate liable for ante-nuptial debts 1564
    liability for torts of wife 1565
    husband's deeds shall not affect wife's lands 1566

Section

MARRIED WOMEN,
may convey realty as if sole........ 2
non-resident, conveyance of realty... 13
when not guilty on account of coercion of husband.................. 861
shall have separate estate........... 1558
contracting powers of.............. 1559
may sue and be sued............... 1560
may make will..................... 1561
may carry on general business...... 1562
liable for ante-nuptial debts.......... 1564
liable for her own torts............. 1665
husband cannot convey her lands.... 1566
allowance of personalty to, in divorce proceedings................... 1585
residence of, in divorce proceedings.. 1599
cannot be an executrix or administratrix 1986
as parties in civil actions........2385, 2386
actions shall not abate upon marriage 2401
judgments against, how enforced.... 2666
limitation, in contest of wills........ 3065
recognizance of.................... 3196
listing of property of, for assessment. 3778
redemption of realty of............. 3829
MARSHAL, UNITED STATES,
when summons shall be directed to.. 2424
MASONIC SECRET SOCIETIES.
See secret societies.
MASTER COMMISSIONER,
testimony before, may beused as deposition 2615
depositions may be taken by........ 2617
depositions may be used before..... 2625
may inspect documents, when....... 2639
conveyance by, by order of court.2745–2748
Trial by,
appointment of master commissioners—powers............. 2582
oath and bond.................... 2583
special master commissioners..... 2584
references to master commissioners 2585
powers and duties................ 2586
fees of master commissioners..... 2587
MAVERICKS,
defined—branding and sale of...4107–4118
MAYHEM,
defined—penalty.................... 881
MAYOR. *See cities and towns.*
depositions may be taken before..... 2617
depositions may be used before...... 2625
MEASURES. *See weights and measures.*
penalty for selling by false.......... 1047
MECHANIC,
exemptions of.................... 2790
MECHANICS' LIENS. *See liens.*
on personal property.............. 1469
MERCHANTS,
defined, for purposes of taxation 3794
MESNE PROFITS,
occupying claimant entitled to....... 2998
MILEAGE,
of jurors in district court 1207
limitation upon allowances for....... 1215
MILITIA,
of what it shall consist............. 1601
formation of companies............ 1602
constitution and by-laws........... 1603
when arms issued to companies..... 1604

Section

MILITIA—*Continued.*
when militia subject to call 1605
system of discipline 1606
removal of officer 1607
penalty for neglect of duty.......... 1608
regimental officers 1609
regiment defined—staff officers...... 1610
governor may call out militia 1611
when senior officer may call militia.. 1612
when sheriff may call militia........ 1613
terms of office of commissioned officers 1614
brigadier-general.................. 1615
organization and duty of militia 1616
compensation of militiamen 1616
MILITIA COMPANIES,
may incorporate.................... 566
power to impose fines 577
subject to command of governor 577
MILITIAMEN,
exempt from arrest in civil actions, when 2805
MILLER, CHAS. F.,
legalization of acts of as probate judge in Laramie County............. 1982
MINER,
exemptions of..................... 2790
MINING COMPANIES,
may construct roads over public domain...................... 525
MINES AND MINING,
liens upon 1486, 1506
copies of mining records to be filed in register's office................ 1617
duty of district recorder............ 1618
surface owners entitled to security... 1631
additional location certificate when may be filed 1632
re-location of abandoned claim...... 1633
location certificate to contain but one claim........................ 1634
intimidating owners of mine—penalty........................ 1635
malicious destruction of mining property—penalty............. 1636
mining swindles declared felonies... 1637
stock guards shall be placed about shafts 1638
lode and placer claim law does not apply to coal mines 1639
Lode Claims.
length of mining claim........... 1619
width of claim................... 1620
location certificate of mineral lode. 1621
when location certificate void...... 1622
manner of designating location of claims...................... 1623
substitutes for discovery shaft..... 1624
time for sinking shaft............ 1625
what a claim shall include......... 1626
Placer Claims,
location certificate of placer claim. 1627
expenditure necessary to hold claim 1628
use of water for mining........... 1629
right of way for ditches, etc....... 1630
Coal Mines.
map of mines, and its essentials... 1640
opening to be maintained in mines. 1641
care and conditions of openings ... 1642
ventilation regulations............ 1643

Section
MINES AND MINING—COAL MINES—*Continued.*
  brushing fire damp 1644
  mining boss, duties and powers of—safety regulations 1645
  negligence of miner—penalty,—traveling way 1646
  inspector of coal mines,—appointment and compensation 1647
  bond of duties of inspector 1648
  inspectors' powers—further duties. 1649
  accidents in mines,—coroner's inquest 1659
  procedure when inspector neglects duty 1651
  appeals from decision of inspector. 1652
  mining board—examination of mining bosses—certificate—penalty for employing boss without certificate 1653
  boys and women shall not work in mines 1654
  civil liability, for failing to comply with mining laws 1655
  stretchers to be kept at mouth of mine 1656
  report of territorial inspector 1657
  annual reports to inspector 1658
  penalties for violating mining law. 1659
  small mines not affected by mining law 1660
MINISTERS OF THE GOSPEL. *See clergymen.*
  need not be jurors 3376
MINORS. *See adoption; see guardian and ward; see juvenile delinquents.*
  penalty for enticing, to gamble 998
  penalty for selling liquor to 999
  when marriage of annuled 1592
  parents consent necessary to marriage of 1545
  support of, from estate 2187
  saving to, in limitation of actions 2367, 2375
  shall bring action by guardian or next friend 2387
  shall be defended by guardian 2392
  service upon 2434
  cannot consent to a reference 2577
  answers of guardians of 2465
  verification of pleadings or, by guardian 2490
  rights of, preserved in judgments 2677
  limitation for proceedings to vacate judgments after attaining majority 2710
  revivor of judgment, after majority of 2715
  entitled to homestead exemptions 2782
  guardian may act for, in partition 2978
  limitations, in contest of wills 3065
  recognizance of 3196
  age at which they may be parties in justice's court 3423, 3428
  redemption of realty of, sold at tax sale 3829
MISDEMEANOR. *See crimes.*
  defined 866
MISJOINDER,
  of parties plaintiff, cause of demurrer 2449
  several petitions may be filed, in cases of 2452

Section
MISNOMER,
  in indictments 3267
MISTAKES. *See amendments.*
  proceedings to correct, in obtaining judgment 2704
  in not suing for full amount—remedy 2711
MONEY,
  abbreviated petition for payment of 2473
  description of, in indictment 3254
MORTGAGES. *See alienation.*
MORTGAGES, CHATTEL,
  how executed 70
  shall be recorded or possession transferred 71
  place of record of 72
  recording when property removed to another county 73
  when to take effect 74
  term of mortgage lien 75, 79
  affidavit of renewal 75
  what personalty may be mortgaged 76
  what a sufficient description of mortgaged personalty 77
  increase of live stock and after acquired live stock may be mortgaged 77
  mortgagor may use, sell and replace mortgaged personalty — restrictions 78
  foreclosure under power of sale 80
  prerequisites of foreclosure 81
  notice of foreclosure 82
  former proceedings not affected 83
  what notice shall specify 84
  postponement of sale 85
  conduct of sale 86
  place of sale 87
  mortgagee may purchase at sale 88
  implied covenant to pay debt—liability of mortgagor for deficiency after sale 89
  equity of redemption extinguished by sale 89
  sale or removal of mortgaged property without consent a felony 90
  right under former sales protected 91
  subject to liens 1482
MORTGAGES, REAL, *See alienation.*
  no implied covenant to pay mortgage debt—remedies of mortgagee 6
  when admissible as evidence 20
  recorded absolute deed not affected by unrecorded deed of defeasance 21
  recorded assignment not notice to mortgagor 22
  assignment and discharge on margin of record 30
  discharge by certificate of release 31
  mortgagee failing to discharge—when liable 32
  redemption of, by estate of decedent. 2099
  of property of minors 2259
  of realty of lunatics and drunkards 2308, 2317
  foreclosure, joinder of, actions for money judgment 2410
  judgment upon foreclosure of—procedure 2663, 2664
  notice of assessment of property 3779

Section

MORTGAGES, REAL—*Continued.*
wife shall join in execution of, upon homestead 2784
who shall pay taxes upon mortgaged property 3778
FORECLOSURE OF,
when by advertisement 36
prerequisites of 37
notice of 38
what notice shall specify 39
sale how conducted 40
postponement of sale 41
distinct tracts to be sold separately. 42
mortgagee may purchase at sale.. 43
deed and its requisites 44
cost and expenses of sale, how paid 45
to whom surplus of sale payable .. 46
evidence of sale may be perpetuated, how 47
affidavit to perpetuate evidence, how taken 48
affidavit to be recorded 49
duty of register of deeds respecting affidavit 50
application of chapter on foreclosure of realty mortgages ... 51
MOTIONS,
to strike 2474
to make counter-claims and set-offs separate actions 2476
for consolidation of actions 2507
defined 2508
motion may contain several objects.. 2509
notice of motion—contents of 2510
who may serve notices 2511
manner of service 2512
when notice not required 2513
may be heard at any time 2521
to hear exceptions to deposition 2634
for vacation of judgment, etc....2652–2655
to dismiss action for failure to give security.................2688–2690
payment of costs of 2694
to vacate satisfaction of judgment... 2758
for new appraisement, for sale on execution 2762
to discharge attachments........2910, 2911
to vacate or modify injunction 2932
for amercement 2942
to quash indictment 3262
in arrest in criminal actions.....3350–3353
for new trial in justice's court...... 3471
in justice's court, to discharge attachment 3557
MOUNTAIN LIONS,
bounty for destruction of 4234
MULES. *See stock, live.*
MUNICIPAL CORPORATIONS. *See cities and towns, counties, corporations.*
MURDER,
in first degree, defined 870
in second degree, defined 871
manslaughter defined 872–874
when perjurer guilty of 937
MUTUAL AID SOCIETIES, *See aid societies, mutual.*
NAME,
of adopted child 2286
when suit may be brought in fictitious 2505

Section

NAME—*Continued.*
action may be brought by initial letter or contraction of names, when... 2399
NATURE, CRIME AGAINST,
defined—penalty 884
NEAT CATTLE. *See stock, live.*
NEGLIGENCE,
injury of property from firing woods prairie, *prima facie* evidence of... 922
NEWSPAPER,
in which service by publication shall be made 2437
NEW TRIAL,
probate court, of demands against estates 2159
inquisition of lunatics and drunkards. 2294
defined—causes for 2652
when smallness of damages not sufficient cause for 2653
when application for, to be made..... 2654
application shall be by written motion 2655
application after term, shall be by petition 2656
on vacation of judgment 2701
in criminal actions—general provisions 3477–3449
in justice's court 3470, 3471
NEW YEAR'S DAY,
a legal holiday 1430
NEXT FRIEND,
actions by 2387
liable for costs 2388
NON OBSTANTE VEREDICTO,
judgments 2675
NON-RESIDENTS. *See aliens.*
cannot be administrators 2036
rule of descent and disposition of estate of 2195–2200
may be executor—service upon 2239
minors, property of—guardian...2270–2272
venue of actions against 2419
constructive service upon 2435
verification of pleadings of......2493, 2496
shall give security for costs.....2687, 2689
property of, subject to attachment... 2869
may be admitted to blind, deaf and dumb institute 3732
NON-SUIT,
may be had for failure to answer interrogatories 2488
NOTARIES PUBLIC,
may take acknowledgements 8
fees of 1190
entitled to copy of laws 1425
NOTARY PUBLIC,
appointment and term of office 1661
attesting and recording of commission 1662
bond and oath of office 1663
legalization of imperfect qualifications 1664
official seal and register 1665
general powers of notaries 1666
certificate of notary as evidence 1967
registers to contain record of protests. 1668
action on notarial bond 1669
register to be deposited with register of deeds 1670
neglect of duty by register of deeds—penalty 1671
defects in notarial seals disregarded.. 1672

Section
NOTARY PUBLIC—*Continued.*
when justice and probate judge may protest 1678
depositions may be taken before..... 2617
may administer oaths............ 3412
NOTES,
makers of cannot be summoned from another county 2425
abbreviated pleadings upon 2473
NOTICE,
recorded instruments affecting realty are constructive 17
recorded assignment not constructive to mortgagor........ 22
of application for settlement of boundary lines........ 673
when published in another county... 2345
of amendments to pleadings.....2498, 2499
of supplemental pleadings, may be required,........ 2506
of motion for consolidation of actions. 2507
of motion—contents of........ 2510
service of notices of motion.....2511, 2512
when notice of motions not required. 2513
to have action dismissed for want of revivor 2546
to parties when jury disagrees....... 2557
to take deposition........ 2621
of opening of judgment on service by publication........ 2702
of sale of goods on execution....... 2732
of the sale of realty........ 2740
of motion to vacate satisfactions of judgments 2758
to execution plaintiff, in trial of right of property........ 2792
to railroad company, when garnisheed 2813, 2814
of justification of bail, in civil actions 2853
of appointment of receiver.......... 2889
of application for injunction......... 2922
of application for injunction to party who answers........ 2923
service of notice of order of injunction........ 2925
of motion for amercement.......... 2943
of application to file petition in *quo warranto* proceedings.......... 3101
of application for change of venue in vacation 3402
of motion for new trial in justice's court 3471
in justice's court, to quit, in forcible entry and detainer........ 3576
of trial of right of property, in justice's court........ 3538
of delinquent taxes........ 3809
of sale of realty for taxes........3822, 3826
of redemption of realty........ 3830
of meeting of territorial board of equalization to hear complaints.. 3840
of petition for road........ 3861
of letting contracts for county bridges 3892
of meeting of teachers' institute..... 3910
of school district meetings.....3042, 3956
when swine running at large....4162, 4163
of sale of impounded goats and swine 4165
of sale of estrays 4175
of diseased stock, to veterinarian.... 4206

Section
NUISANCES,
when obnoxious substances becomes —duties of owners of.......... 1020
abatement of........ 1022
incorporated towns may regulate.... 1024
may be abated by county commissioners 1924
improper storage of explosives, shall be 1952
abatement of actions for, by death... 2531
OATH,
form in which, may be taken........ 2340
of jury, in civil cases........ 2552
of witness, in civil actions........ 2608
who may administer........ 3412
affirmation and form of oath......... 3413
ODD FELLOWS. *See secret societies.*
OCCUPYING CLAIMANTS,
settlement of claims of, on town sites. 1391
actions concerning........2592–3002
OBSCENE LITERATURE,
penalty for circulation of........ 997
OBSCENE WORDS,
may be stricken from pleadings...... 2474
OFFENSES AGAINST PUBLIC JUSTICE,
defined—penalty........936–970
OFFENSES AGAINST PUBLIC MORALITY, HEALTH AND POLICE,
defined—penalty........988–1034
OFFENSES AGAINST PUBLIC PEACE,
defined—penalty........971–987
OFFENSES AGAINST PUBLIC POLICY,
defined—penalty........1075–1077
OFFENSES BY CHEATS, SWINDLERS AND OTHERS,
defined—penalty........1035–1055
OFFENSIVE WEAPONS,
penalty for having possession of..... 1027
OFFICERS, COUNTY. *See county officers.*
OFFICERS, TERRITORIAL. *See territorial officers.*
OFFICERS. *See offenses against public justice.*
shall deliver all statutes to successor. 1426
fiscal, shall balance accounts and make report at end of each fiscal year . 1732
ministerial, may have deputies 2339
may require justification of sureties.. 2342
may sue and be sued, when......... 2384
holding execution may be joined, when 2404
interpleder in favor of 2406, 2407
property of, may be sold on execution, without valuation 2739
succeeding officer may make deed... 2753
relief of, who levy on wrong property 2759
attending court, privileged from arrest in civil actions 2805
fees of, in examination of judgment debtor 2837
sureties of, may be discharged—proceedings 3042–3048
shall take recognizance........ 3210

Section
OFFICERS—*Continued.*
need not be jurors................ 3379
guilty of contempt, for failing to draw jurors, etc 3393
shall not purchase at execution sales in justice's court................ 3521
penalty for neglect to comply with tax law......................... 3838
OFFICES, PUBLIC,
registrations from, to whom made... 1170
how elective offices become vacant.. 1171
OIL WELLS,
liens upon.....................1493, 1506
OPENING,
of judgment on service by publication 2702
OPIUM,
use of prohibited—penalty......1014—1016
ORAL EXAMINATION,
testimony may be taken by......... 2609
defined 2610
ORDERS. *See process.*
shall be entered by clerk of court.... 2353
sheriff shall execute................ 2359
for trial of questions of facts in civil actions....................... 2362
for third person to appear, in interpleader 2405
in which cases shall be tried......... 2521
for revivor....................2536, 2537
defined........................... 2657
for arrest in civil actions........... 2842
of court, enforcement of............. 2941
final, defined...................... 3126
PARDONS,
governor shall notify penitentiary commissioners of............... 1787
application for.................... 3367
notice of application for........... 3368
prosecuting attorney shall make statement to governor.............. 3369
when application and notice not necessary.......................... 3370
PARENTS,
natural guardians of children 2250
when appointed guardian of property 2253
consent necessary to adoption...2275, 2279
may reclaim children.............. 2283
shall send children to school........ 3950
PARKS,
societies to maintain may incorporate 566
limitation upon dividends........... 573
regulation of...................... 576
PARTIAL PAYMENT,
renews obligation.................. 2381
PARTIES TO ACTION,
how designated.................... 2361
general rule as to plaintiff........... 2382
in actions on bonds................ 2383
in actions by executors and other representatives................. 2384
married women as parties........... 2385
wife may defend................... 2386
insane persons and infants by guardian or next friend............ 2387
next friend liable for costs.......... 2388
defense of insane person............ 2389
guardian *ad litem*, duties and compensation........................ 2390
determination of insanity........... 2391
defense of minor.................. 2392

Section
PARTIES TO ACTION—*Continued.*
appointment of guardian............ 2393
joinder of plaintiffs................. 2394
joinder of defendants............... 2395
unwilling parties may be made defendants 2396
when parties numerous, one may appear for all.................... 2393
joinder of persons severally liable... 2398
contraction of name, when permitted 2399
partnerships—actions in firm name.. 2400
marriage of female—transfer of interest......................... 2401
saving rights of parties not in court.. 2402
persons claiming interest may be made parties.................. 2403
officer holding execution may be joined, when................. 2404
interpleader........................ 2405
interpleader in favor of officer....... 2406
plaintiff in execution, may be substituted for officer.............. 2407
misjoinder and defect of, causes of demurrer 2449
plaintiff shall be real, party in interest—exceptions................2382–2384
savings of rights of, not before court. 2402
third persons claiming may be made. 2403
officer holding execution may be made 2404
new, to counter-claims.............. 2461
new, to set-off.................... 2463
to actions, when shall testify......... 2590
to actions, may be compelled to testify 2591
attending court, privileged from arrest in civil actions................... 2805
in actions for sale of property given for religious use............... 3019
in actions to sell entailed and other estates......................... 3010
in proceedings to enjoin collection of taxes, etc...................... 3055
in action to contest wills............ 3058
to actions in *quo warranto*.......3092, 3093
PARTITION,
venue in actions for................ 2411
who compelled to make............. 2962
where proceedings to be had 2963
petition, what to contain............ 2964
order for partition—appointment of commissioners 2965
writ of partition................... 2966
duties of commissioners............. 2967
partition of several tracts............ 2968
amicable partition.................. 2969
appraisement—election to take at appraised value................ 2970
terms of payment—conveyance...... 2971
when estate shall be sold,........... 2972
conduct and terms of sale........... 2973
confirmation of sale—conveyance.... 2974
distribution of proceeds—sheriff's liability 2975
alias writs for sale—re-valuation..... 2976
succeeding officer may make deed... 2977
guardian may act for ward.......... 2978
powers of foreign guardian......... 2979
partition of property of religious corporations.................. 2981
partition of property of religious societies 2982

Section
PARTITION—*Continued.*
  actions of one parcener against another 2980
  restrictions upon partition of religious corporations and societies....... 2983
  costs and expenses to be equitably taxed.......................... 2984
PARTNERSHIP,
  estates of, administration of....2027—2034
  may sue or be sued in firm name.... 2406
  service of summons upon........... 2429
  partners may be parties to judgment against......................... 2717
  executions against property of....... 2728
  liability of partners for taxes, of..... 3786
PARTNERSHIPS, SPECIAL.
  for what purpose formed............ 4069
  general and special partners......... 4070
  requisites of certificate.............. 4071
  acknowledgement and recording certificates—liability for false statements 4072
  affidavit as to contribution, by partners shall be filed............... 4073
  when partnership complete 4074
  publication of certificate............ 4075
  affidavit of publication.............. 4076
  renewal of special partnerships...... 4077
  authority of general partner......... 4078
  authority of special partners......... 4079
  claim of special partner against partnership 4080
  actions by and against partnership... 4081
  special partner, shall not withdraw capital......................... 4082
  special partners interest in profits... 4083
  liability of special partner withdrawing capital 4084
  special partnerships shall not give preference to creditor........... 4085
  liability of general partner.......... 4086
  liability of special partner........... 4087
  liability of special partner, for unintentional acts,.................. 4088
  estoppel of third persons contracting with partnerships.............. 4079
  when special partnerships become general.......................... 4090
  admission of special partners........ 4091
  dissolution, how effected........... 4092
  manner of using name of special partner............................ 4093
PAUPERS. *See poor and paupers.*
PAWNBROKERS,
  license of........................ 1446
PEACE. WARRANT,
  issuance and process thereon........ 3156
PEDDLERS,
  shall pay license—amount......1439, 1452
  who are deemed.................... 1458
PENALTIES. *See fines and penalties.*
PENITENTIARY. *See penitentiary commissioners.*
  care of juvenile delinquents......... 2334
PENITENTIARY COMMISSIONERS.
  appointment—term of office......... 1777
  authorized to select penitentiary and make contracts.................. 1778
  prisons selected, to be territorial penitentiaries 1779
PENITENTIARY COMMISSIONERS—*Continued.*
  notice to judges 1780
  organization of board—duties of chairman and secretary 1781
  seal 1782
  payment of expenses—chairman to administer oaths................ 1783
  contracts for keeping prisoners—inspection of jails and penitentiary 1784
  maintenance and removal of prisoners—clerk to notify board....... 1785
  record of accounts of board—settlements 1786
  duties of clerk and sheriff—pardons . 1787
  report of board of legislature........ 1788
  when sheriff to transport prisoners .. 1789
  prisoners in Nebraska penitentiary... 1790
PERFORMANCE,
  tender of, before suit 2525
PERISHABLE GOODS,
  disposition of, in tender of before suit 2525
PERJURY,
  defined—penalty—indictment 936–938
  proof necessary in cases of.......... 3297
PERSON,
  execution against...............2797–2804
PERSONAL REPRESENTATIVES.
  See executors and administrators.
  may bring action for death, caused by negligence, etc .... 2364 *b*
  actions by......................... 2384
  venue of actions against 2420
  constructive service upon........... 2435
  revivor in name of................. 2534
  testimony against in actions by...... 2590
  may bring action for completion of real contracts 3006
  of surety—rights of................ 3039
  need not give undertaking to stay execution in proceedings in error 3139
PERSONALTY,
  chattel mortgages.................. 70–91
  execution upon—general provisions. 2721–2771
  trial of right of property of, in execution 2792–2794
  when, shall be listed for assessment . 3784
  distraint and sale of, for taxes...3813, 3818
  taxation of.....................3843, 3853
PETITION,
  in *habeas corpus* cases............... 1264
  in water-right cases................ 1345
  in divorce and alimony proceeding.. 1569
  1570, 1554, 1593, 1594
  in probate court, for sale of realty, to pay debts, of decedents... 2102
  2103, 2109, 2110
  in probate court for specific performance of realty contract of decedent.......................... 2124
  in probate court to sell realty of minor.......................... 2260
  in actions for abandonment of child. 2285
  to sell or mortgage realty of lunatics and drunkards............2308, 2309
  joinder of actions in............2408–2410
  the commencement of a civil action.. 2422
  cross, allowed..................... 2446
  what it must contain................ 2447

Section

PETITION—*Continued.*
separate statement of causes of action in.......... 2448
causes of demurrer to.......... 2449
several, may be filed in case of misjoinder.......... 2452
allegations in, what deemed true, and what deemed denied.......... 2468
amendments to..........2498, 2499
supplemental, when allowed.......... 2506
in actions for discovery.......... 2641
for new trial.......... 2656
to vacate judgment.......... 2705
for partition.......... 2964
in actions to recover realty.......... 2987
in action against co-tenant.......... 2989
in action to complete real contracts.......... 3004
in actions for sale of entailed or life estates.......... 3010
for sale of property given for religious use.......... 3018
for *mandamus*.......... 3075
in *quo warranto* proceedings, against officer.......... 3098
in error.......... 3131
for road.......... 3860
for private road.......... 3871

PHARMACISTS,
must be registered.......... 1932
who may compound prescriptions.......... 1933
commissioners of pharmacy, appointment, etc.......... 1934
registration of pharmacists.......... 1935
examination of pharmacists by commission.......... 1936
fees for examination—re-examination.......... 1937
responsibility of pharmacists.......... 1938
sale and labeling of poisons.......... 1939
penalty for practicing without registration.......... 1940
physicians may put up their own prescriptions.......... 1941

PHYSICIAN,
prescribing drugs while intoxicated—penalty..........1010, 1011
fees of, when testifying as expert.......... 1200
may put up their own prescriptions.......... 1941
qualifications of practitioners.......... 1925
copy of diploma shall be filed.......... 1926
person filing diploma shall be identified.......... 1927
penalty for practicing without authority.......... 1928
arrest of offenders.......... 1929
practicing in cases of emergency not unlawful.......... 1930
evidence upon trial of offenders.......... 1931
privileged communications of.......... 2589
need not be jurors.......... 3376

PHYSIOLOGY,
shall be taught in public schools.......... 3969–3972

PLACER CLAIMS. *See mines and mining.*

PLAINTIFF,
in action, designated.......... 2361
shall be real party in interest—exceptions..........2382–2384
when numerous, one may appear for all.......... 2397

Section

PLAINTIFF—*Continued.*
when joined.......... 2394
in execution, may be made defendant in interpleader.......... 2407
may demur to counter-claim or set-off in answer.......... 2455
upon death of, in whose name action revived.......... 2540
limitation of revivor of action upon death of.......... 2544
may dismiss action.......... 2661
may object to bail, in civil actions.......... 2652
shall give security for costs, when... 2687, 2689
shall not recover costs, when—shall pay costs, when..........2696, 2697

PLEADINGS,
form and rules prescribed.......... 2444
defined—fictions abolished.......... 2445
names of pleadings allowed.......... 2446
petition..........2447–2448
demurrer..........2449–2456
answer and cross petition..........2457–2465
reply.......... 2466
general rules..........2467–2497
mistakes and amendments..........2498–2507
motions..........2508–2513
in *quo warranto* proceedings.......... 3104
in justice's court..........3433–3440

PLEDGE,
corporate stock as collateral not affected by levy.......... 2779

POISONING,
penalty for.......... 879

POISONS,
sale and labeling of.......... 1939

POLICE REGULATIONS,
restrictions upon sale of railroad tickets.......... 1942
railroads shall plow fire guards.......... 1947
storage of explosives.......... 1950

POLLING JURY,
may be required by either party.......... 2561

POLL TAX,
levy and collection of..........3768–3770
age of exemption from.......... 3771

POOR AND PAUPERS.
commissioners to have superintendence of.......... 1953
mode of providing for.......... 1954
care of non-resident, when sick.......... 1955
residence of paupers as affecting relief 1956
each county shall care for its own paupers.......... 1957
misdemeanor to bring pauper into county.......... 1958
authorities not to send paupers into other counties.......... 1959
disposition of effects of pauper decedent.......... 1960
disposition of surplus arising from sale.......... 1961
county workhouses and hospitals.......... 1962
tax levy for poorhouse, in Laramie County.......... 1963
counties to pay for care of pauper insane.......... 1964
maintenance of insane, eonfined at Mount Pleasant, Iowa.......... 1965
burial of indigent veterans.......... 1966–1968

Section

POPULATION,
of counties, how determined in regulating salaries 1226
POSSE COMITATUS,
penalty for refusing to join 1028
POSSESSORY RIGHTS,
regulations concerning 1414–1419
POSTHUMOUS CHILDREN,
shall inherit 2222
POST-MORTEM EXAMINATION,
fees of physicians making 1200
at coroner's inquests 1888
POWER OF ATTORNEY,
is not a conveyance 25
recording of 25
when used as evidence 25
revocation of, to be recorded 26
PRACTICE, RULES OF,
in supreme and district courts 826
PRAIRIE DOGS,
bounty for destruction of 4235
PRAIRIE,
firing—penalty 920–922
PRECIPE,
shall be filed with clerk on demand .. 2349
requisites of 2423
PRE-EMPTIONS,
lands subject to taxation 3776
PREGNANCY,
determination of, etc., of female convict 3343, 3344
PRELIMINARY EXAMINATION,
general provisions 3187–3198
PRESUMPTIONS,
of law, need not be pleaded 2470
PRIESTS,
privileged communications of 2589
PRISON BOUNDS,
judgment debtors entitled to 2801
prescribed—bond 2810, 2811
PRISONERS. *See jails.*
fees of attorneys for defending pauper 141
saving to, in limitations upon actions. 2367, 2375
answer of attorney of 2465
verification of pleadings of, by attorney 2490
may be witnesses—deposition .. 2605, 2606
confessing judgment shall execute warrant of attorney 2672
revivor of judgment, after removal of disability 2715
shall be served with copy of indictment 3258
labor of—general provisions 3371–3375
PRIVATE STATUTES,
how pleaded 2479
PRIVILEGED COMMUNICATIONS,
defined 2589
PROBATE COURTS AND PROBATE JUDGES,
duties and fees in assignments 102–118
judge, when elected 1083
judge shall be *ex-officio* county treasurer 1083
vacancy in office, how filled 1175
fees of judge 1187
when judge may protest paper 1673
shall approve bonds of county commissioners 1799

PROBATE COURT AND PROBATE JUDGES—*Continued.*
may allow writ of *habeas corpus* 1267
judge shall keep office at county seat. 1901
executors and administrators 1983–2220
descent and distribution of property. 2221–2233
wills and their probate 2234–2249
guardian and ward 2250–2273
adoption 2274–2286
lunatics and drunkards 2287–2331
juvenile delinquents 2332–2336
shall keep office at county seat 1901
reference cannot be ordered except by consent 2578
shall issue subpœna 2594
may release imprisoned witness 2603
depositions may be taken before 2617
proceedings to vacate or modify judgments 2712
terms of court, how long continued .. 2712
may order examination of judgment debtor—fees 2820, 2836
may grant injunction 2921
jurisdiction of, in actions to complete real contracts 3006
in contest of wills, shall certify proceedings to district court 3059
shall approve undertaking to stay execution in justice court, when 3142
judge may administer oaths 3412
Powers and Duties of Judge as Treasurer,
probate judge to be treasurer—term of office—oath and bond 1820
treasurer to be collector of taxes—bond 1821
probate records 1822
jurisdiction of judge as justice of the peace 1823
general duties of judge as treasurer 1824
receipts and disbursements of money 1825
treasurer's accounts—annual settlement 1826
order in which warrants paid 1827
settlement of treasurer after removal, etc 1828
warrants to be countersigned and registered 1829
restrictions upon countersigning warrants 1830
registration of county warrants 1831
settlement with territorial treasurer 1832
malfeasance of treasurer—penalty. 1833
officer to pay money to treasurer in thirty days 1834
deputy treasurer—appointment, etc 1835
cash book shall be kept by treasurer 1836
form of treasurer's receipts 1837
further duties of treasurer 1838
neglect of duty by treasurer—penalty 1839
Terms and General Powers of Court,
terms of court 1969
seal—attesting process 1970
when business may be transacted .. 1971
enforcement of judgments 1972
execution of process 1973

Section
PROBATE COURTS AND PROBATE JUDGES — TERMS AND GENERAL POWERS OF COURTS—*Continued.*
probate judge shall not practice law 1974
furniture for probate office........ 1975
probate judge may administer oaths, etc.................. 1976
proceedings to be on written or oral application.............. 1977
further duties and powers........ 1978
office to be at county seat......... 1979
juries—manner of empaneling, etc 1980
witnesses 1981
legalization of acts of probate judge, in Laramie County........... 1982
PROCEDURE,
civil, code of...................2237–3155
criminal, code of..............3156–3375
miscellaneous.................3376–3414
in courts of justices of the peace.3415–3664
PROCEEDINGS IN ERROR,
may be had before any judge........ 844
PROCESS,
forms of, in supreme court.......... 826
in supreme court, how executed..... 827
PROCESS, CIVIL,
penalty for rescuing person held on... 924
relating to prisoners shall be recorded 1370
in divorce proceedings............. 1575
service of, against counties........ ... 1796
shall be executed by sheriff......... 1868
service of, on sheriff................ 1870
when executed by coroner.......... 1878
of probate court, how issued—execution.......................1970, 1973
in probate court, to enforce orders... 2212
probate court, to non-resident executor............................. 2239
lunatics and drunkards exempt from, when.......................... 2321
when served on guardian of lunatics and drunkards 2322
style and attestation of............. 2344
shall be issued by clerk of court..... 2349
when directed to coroner or other person 2357
special appointment to serve—return 2358
sheriff shall execute................ 2359
service of, when more than fifty miles 2428
amercement for failure to serve or return.......................... 2944
to compel attendance of witness before arbitrators................ 2952
for witnesses before grand jury..... 3227
on indictments.................3255–3257
for witnesses in criminal actions.... 3289
justice may issue, in any place in county......................... 3418
PROOF,
failure of, not a variance 2644
PROPERTY,
after acquired, when to pass under will.......................... 2236
what, subject to taxation........... 3776
all property subject to execution for delinquent road tax............ 3885
PROSECUTING ATTORNEY,
bribery of or by................... 940
when elected...................... 1083

Section
PROSECUTING ATTORNEY—*Continued.*
shall make application to governor to offer rewards for apprehension of criminals 1079
vacancy in office of, how filled...... 1175
salary of.......................... 1194
certificate of, of fees of stenographer in criminal matters 1764
oath and bond..................... 1893
general duties—employment of other attorneys by county............ 1894
shall be legal adviser of county officers 1895
restrictions upon employment....... 1896
shall examine official bonds......... 1897
may verify pleadings, when territory a party 2489
may commence *quo warranto* proceedings 3094
may appear before grand jury....... 3226
may take exceptions in criminal actions....................3307, 3308
PROTEST,
power of notaries to 1666
register of notaries of............... 1668
when justices of the peace and probate judges may................ 1673
PROVISIONAL REMEDIES,
arrest and bail..................2839–2868
attachment......................2869–2911
attachment before debt due 2912–2918
injunctions 2919–2934
receivership and other provisional remedies..................2935–2941
PUBLIC BUILDINGS AND INSTITUTIONS,
capitol buildings and university..3665–3718
university lands................3719–3724
blind, deaf and dumb institute...3725–3738
insane asylum..................3739–3767
PUBLIC DOCUMENTS,
copies of, how proven.............. 2593
PUBLIC INSTRUCTION, SUPERINTENDENT OF. *See superintendent of public instruction.*
PUBLICATION. *See construction service.*
of notices, when made in another county.......................... 2345
PURCHASER,
definition of....................... 23
QUALIFICATION,
of sureties upon bond.............. 2343
QUARANTINE,
authority of veterinarian to......... 4201
QUIETING TITLE,
actions 2985–2991
QUIT-CLAIM DEED,
effect of .... [illegible]3
word "release" not necessary in..... 35
QUO WARRANTO,
actions against persons............. 3092
actions against corporations 3093
commencement of action 3094
upon whose relation action brought.. 3095
action by person claiming public office 3096
when attorney may prosecute. 3097
petition in action for usurpation of office—judgment 3098

Section

QUO WARRANTO—*Continued.*
all claimants may be made defendants 3099
place of bringing action 3100
application to file petition—notice ... 3101
issuance and service of summons.... 3102
service by publication.............. 3103
pleadings after petition 3104
extension of time for pleading....... 3105
judgment in case of usurpation...... 3106
judgment ousting trustee of corporation 3107
order for new election of trustee..... 3108
rights of person adjudged entitled to office......................... 3109
action for damages against persons ousted........................ 3110
enforcement of judgment........... 3111
judgment against corporations 3112
appointment of trustees, when corporation dissolved 3113
duties and powers of trustees........ 3114
enforcement of delivery to trustees.. 3115
judgment for costs 3116
order directing transfer of books, etc. —enforcement................ 3117
injunction in aid of proceedings against banking association 3118
when security required of bank directors 3119
directors may be enjoined from borrowing money 3120
limitation upon time of bringing action 3121
actions against officers of ousted corporations 3122
quo warranto provisions are cumulative 3123
disposition of fines 3124
precedence of *quo warranto* proceedings in court 3125
RACE COURSES. *See parks.*
RAILROAD COMPANIES,
condemnation proceedings by....... 548
may issue bonds 549
consolidation—proceedings to effect.. 550, 562
when consolidation complete........ 551
effect of consolidation — rights of creditors...................... 552
may subscribe to stock of other companies 553
power to contract with each other 554, 562
aid by counties to............. 555–565
interfering with property of......... 919
shall post law forbidding discharging firearms from trains........... 984
venue of actions against............ 2416
service upon....................... 2431
garnishment against........... 2813–2819
assessment of property of.......3778–3780
assessment of lines of...........3839–3842
indemnity for stock killing by ..4195–4198
RESTRICTIONS UPON SALE OF TICKETS OF,
agents shall have certificate of authority...................... 1942
unlawful to sell without certificate. 1943
penalty 1844
certificate shall be posted—form... 1945
redemption of unused tickets 1946

Section

RAILROAD COMPANIES — *Continued.*
FIRE-GUARD REGULATIONS,
where fire-guards shall be plowed . 1947
penalty for non-compliance 1948
liability for damages.............. 1949
RAPE,
defined—penalty 882
RAWLINS, CITY OF,
corporate limits and name........... 411
general corporate powers........... 412
powers exercised by mayor and trustees........................ 413
mayor and trustees—term of office—qualifications.................. 414
annual elections.................... 414
qualifications of electors............ 415
manner of conducting elections...... 416
duties of mayor—casting vote....... 417
appointive officers—term of office.... 418
mayor shall sign warrants and conveyances......................... 419
approval and veto of mayor—advisory powers....................... 420
special meetings of trustees......... 421
officers shall exhibit accounts, etc., to mayor........................ 422
vacancy in mayor's office, how filled. 423
mayor may remit fines and grant pardons......................... 424
quorum of trustees — appropriating money......................... 425
general powers of mayor and trustees. 426
appropriation of money..........425, 427
limitation on municipal indebtedness. 428
enumeration of specific corporate powers 429
employment of attorney............ 430
certain license money in Carbon County payable to city.......... 431
fees of police justices.............. 432
punishment by fine and imprisonment 433
appeals from police justice to district court 434
contempt of police court............ 435
powers of marshal.................. 436
powers of policemen................ 437
marshal and police, to whom subject. 438
powers of officers.................. 439
compensation of officers............ 440
misconduct of officers—penalty...... 441
election—challenges—oath of elector. 442
oath of officers..................... 443
transfer of property to city from Carbon County.................. 444
county seat of Carbon County....... 660
REAL ACTIONS,
limitation of...................2366, 2367
joinder in......................... 2408
venue of..................... 3411, 2413
revivor of, on death of defendant.... 2542
TO QUIET TITLE AND RECOVER POSSESSION,
actions to quiet title............... 2985
recoupment by vendee in actions for purchase money.......... 2986
petitions in actions to recover realty 2987
answer in such actions............ 2988
petition in action against co-tenant. 2989
benefit of occupying claimant law. 2991

Section

REAL ACTIONS—TO QUIET TITLE AND RECOVER POSSESSION—*Continued.*
  recovery of realty when right to terminates during action...... 2990
 OCCUPYING CLAIMANTS,
  benefit of law relating to.......... 2991
  when occupying claimant shall be paid for improvements......... 2992
  tax title, sufficient to protect occupant.... 2993
  entry of claim for improvements on journal—drawing jury..... 2994
  duties of jury........................ 2995
  talesmen.............................. 2996
  report of jury—new valuation..... 2997
  judgment on reports, bars action for mesne profits.................... 2998
  proceedings, if report is for occupying claimant................. 2999
  writ of possession, to issue on payment for improvements 3000
  if deed tendered and payment refused, writ shall issue 3001
  when occupant may bring action for title......................... 3002
 TO COMPLETE REAL CONTRACTS,
  completion of contracts by survivors 3003
  requisites of petition 3004
  judgment—deed 3005
  completion of contract by personal representative................. 3006
  judgment—deed 3007
  heirs and devisees, may compel completion.................. 3008
 TO SELL ENTAILED AND OTHER ESTATE,
  who may obtain sale.............. 3009
  requisites of petition—parties..... 3010
  order for sale, and effect of sale.... 3011
  sale by consent of parties 3012
  confirmation of sale—deed 3013
  proceeds shall descend, etc., like the estate sold................ 3014
  investment of proceeds—trustees.. 3015
  income, taxes and expenses 3016
  such estate may be leased 3017
  sale of property, given for religious use 3018
  necessary parties to proceeding.... 3019
REAL CONTRACTS,
  actions to complete.............3003–3008
REALTY,
  how described in real actions........ 2482
  subject to execution—general provisions concerning..........2721–2771
  not a matter subject to arbitration... 2949
  partition of....................2962–2984
  title to, shall not be tried in justice's court........................ 3435
  what considered, in taxation....3776, 3782
  shall be listed for assessment annually 3790
  sale of, for taxes................3822–3835
  of judgment debtor may be sold..... 2834
  limitation on ownership of. *See laws of congress in appendix.*
RECEIVERS,
  when appointed 2935
  who ineligible as.................... 2936
  oath and undertaking of............. 2937

Section

RECEIVERS—*Continued.*
  powers of......................... 2938
  investment of funds by 2939
  of property of judgment debtor..2832, 2833
  IN DISPOSITION OF ATTACHED PROPERTY,
   appointment of receiver.......... 2887
   duties and powers................ 2888
   notice and appointment........... 2889
   report of.........................2890
   attaching officer may act as 2891
   disposition of attached property... 2892
RECOGNIZANCE. *See bail.*
  in proceeding to prevent crime..3157–3161
  in preliminary examinations......... 3189–3197, 3199
  of witnesses, in change of venue in criminal actions................ 3278
  on suspension of sentence, in misdemeanors 3323
RECORD,
  of instruments affecting realty.......15–32
  defined, in cases of submission....... 2571
  of exceptions...................... 2648
  making and completion of.......2679–2685
  of return of execution.............. 2741
REDUNDANT MATTER,
  may be stricken from pleading, on motion......................... 2474
REGISTER OF DEEDS. *See clerk, county.*
  duties in receiving and recording instruments affecting realty 16
  recording instruments improperly executed—penalty 29
  shall witness discharge of mortgage on margin of record........... 30
  duties when certificate of release of mortgage is filed................ 31
  shall record affidavit to perpetuate evidence of sale of realty under foreclosure of mortgage 49
  shall note on margin of mortgage record, the affidavit 50
  duties and fees in filing certificates of foreign corporations 602
  shall record certificates of insurance corporations 609
  fee for recording timber brands..... 1069
  salary and fees of 1184
  shall record water right statements... 1340
  fees for recording miners' liens...... 1499
  fees for recording mechanics' liens,etc. 1513
  Laramie County, fees in special lien law.......................... 1522
  shall record commissions of notaries public 1662
  shall preserve bonds of notaries public 1663
  penalty for failing to record commission of notaries public, etc....... 1672
REFERENCE. *See referee.*
  to master commissioners 2585
  may be made in examination of judgment debtor.............2825–2829
  to determine priority of attachments. 2907
REFEREES,
  reference of issues by consent 2573
  reference by court without consent.. 2574
  trial before referees—report—judgment of referee................ 2576

Section
REFEREES—*Continued.*
further reference in vacation 2575
referees, how chosen................ 2577
referees in probate court............ 2578
referees shall sign bills of exception.. 2579
oath of referees 2580
compensation of referees............ 2581
testimony before, may be used as deposition 2615
depositions may be used before 2625
RELATOR,
in *quo warranto* proceedings......... 3095
RELEASE,
the word, not necessary to a deed of quit-claim 35
RELIGIOUS CORPORATIONS,
partition of property of.........2981, 2983
RELIGIOUS SOCIETIES,
may incorporate.................... 566
proof of corporate existence......... 567
powers — limitation upon property rights 568
by-laws.......................... 569
power to raise money.............. 569
shares of stock.................... 571
assessment........................ 572
officers shall receive no salaries 574
powers of trustees of............... 575
certain ones may incorporate and incorporate eleemosynary institutions 581–588
marriages according to rights of, valid 1555
partition of property of.........2981, 2983
property of, exempt from taxation... 3771
RELIGIOUS USE,
sale of property given for........... 3018
RELIGIOUS WORSHIP,
penalty for disturbing............... 1032
REPLEVIN,
limitation upon actions of........... 2371
joinder of action in................. 2408
action of.......................... 3020
affidavit for order of delivery........ 3021
order for delivery 3022
return day of order................. 3023
execution of order.................. 3024
undertaking on replevin............ 3025
sheriff shall retain possession of relics, etc 3026
appraisement 3027
when property returned to defendant —liability of sheriff............. 3028
exception to sureties—justification... 3029
proceedings when plaintiff fails to prosecute 3030
assessment of plaintiff's damages.... 3031
finding for defendant, damages...... 3032
proceedings when property not taken .. 3033
several orders for delivery may be issued 3034
authority of officer in executing order 3035
action on undertaking.............. 3036
when order may be set aside at clerk's costs.......................... 3037
in justice's court................3522–3537
REPLY,
allowed in pleadings................ 2446
demurrer to....................... 2454
when necessary, and what it shall contain 2456

Section
REPLY—*Continued.*
to answer demanding affirmative relief 2467
allegation of new matter in, shall be deemed denied................. 2468
time in which it may be filed........ 2484
after demurrer is overruled......... 2500
supplemental, when allowed......... 2506
in *mandamus* 3081
REPORTER OF SUPREME COURT,
when and how appointed............ 830
filling vacancy in office of........... 831
REPORTS,
foreign, how proven................ 2592
REPRESENTATIVES, LEGAL,
may redeem realty sold at tax sale... 3829
REPRIEVES,
governor may grant conditional—acceptance 3364
confinement of person reprieved.... 3365
proceedings when condition violated. 3366
RESCUE,
of prisoner 949, 950
RESERVOIRS,
rights of persons constructing....... 1355
RETURN,
time of, of summons 2426
requisites of, of summons........... 2429
on execution 2741
of execution 2764
of execution to another county by mail 2767
of order of attachment 2874
of order of garnishment 2885
of order of injunction 2926
of order of replevin................ 3023
of warrant of arrest................ 3187
of summons of jurors............... 3392
of summons in justice's court........ 3425
in justice's court, of writ of attachment.......................... 3560
REVENUE, COLLECTORS OF TERRITORIAL,
duties and liabilities of..........1698–1702
REVENUE, TERRITORIAL AND COUNTY,
MODE OF RAISING REVENUE.
purposes for which taxes levied—limitations upon amount...... 3768
poll tax, for county purposes and collection thereof............. 3769
guarantee to pay poll tax to collector....................... 3770
property exempt from taxation.... 3771
exemptions to persons cultivating forest trees................. 3772
exemptions to persons cultivating fruit trees.................. 3773
assessor's return shall show tree exemption..................... 3774
homesteaders entitled to tree exemptions...................... 3775
what property subject to taxation . 3776
term "credits" defined........... 3777
by whom property listed—assessment of railroad property..... 3778
demand and notice, how made—"railroad" defined........... 3779
assessment when railroad refuses to make statement........... 3780
reasonable time for service by mayor 3781

Section

REVENUE, TERRITORIAL AND COUNTY — MODE OF RAISING REVENUE—*Continued*
lands obtained by treaty, etc., subject to taxation 3782
commission merchants shall risk property 3783
when personalty shall be listed 3784
how agents shall risk property 3785
where property listed, when business in different counties 3786
assessment of property of certain corporations 3787
taxation of insurance companies ... 3788
assessment of national bank stock. 3789
property shall be listed yearly—real estate 3790
assessment of bank notes, corporate stock, credits, etc 3791
bona fide debts may be deducted from credits 3792
who deemed merchants—rule of valuation 3793
who deemed manufacturers—rule of valuation 3794
assessment books, what to contain. 3795
duties of assessor—return of assessment 3766
further duties of assessor—owner refusing to list, etc 3797
oath of person assessed—refusal to be sworn 3798
oath of assessor, to assessment roll. 3799
neglect of duty by assessor—penalty 3800
county board of equalization—time of meeting—adjustment of assessment—notice of increase .. 3801
remedy of person aggrieved by assessment 3802
abstract of assessment roll, shall be sent to auditor 3803
territorial board of equalization—time of meeting—duties 3804
auditor shall notify county clerks of territorial levy—duties of clerk—limitation of tax 3805
time of making county levy—form of tax list 3806
certificate and warrant to tax list—delivery to collector 3807
duties and authority of collector in collecting taxes 3808
taxes payable, without demand—notice when they become delinquent 3809
when taxes become delinquent—penalty 3510
collection of delinquent taxes—treasurer's fees 3811
delinquent taxes, shall be collected in one year 3812
collector may distrain personalty .. 3813
resisting collector—penalty 3814
what taxes payable in warrants 3815
where taxes and licenses payable in money—order of paying warrants 3816
error in name—omitted property added to list 3817

Section

REVENUE, TERRITORIAL AND COUNTY — MODE OF RAISING REVENUE—*Continued.*
manner of selling personalty for taxes 3818
when taxes become delinquent—interest—tax lien 3819
delinquent taxes, collector failing to make settlement—penalty 3820
refunding taxes erroneously paid .. 3821
notice of sale of realty for taxes .., 3822
time and place of sale 3823
who deemed purchaser — restrictions on selling homestead 3824
purchaser to pay forthwith—re-sale 3825
defects in notice disregarded 3826
certificate of purchase 3827
certificate not assignable 2828
redemption of realty from tax sale. 3829
certificate and notice of redemption 3830
when tax deed shall be made 3831
form of tax deed 3832
counties shall indemnify purchaser when sale unlawful 3833
evidence of sale 3834
limitation upon actions to avoid sale 3835
liability of county for territorial taxes 3836
annual settlement of county treasurer—mode of collecting territorial taxes from counties 3837
neglect of duty by officer—penalty. 3838

ASSESSMENT OF RAILROADS, AND TELEGRAPH LINES WHEN IN MORE THAN ONE COUNTY,
companies shall make verified statement of property — mode of making and apportioning valuation 3839
notice of meeting of board—hearing complaints 3840
tax levy, made on valuation fixed by board 3841
manner of collecting taxes 3842

SPECIAL PROVISIONS RELATING TO THE TAXATION OF PERSONAL PROPERTY,
assessment of live stock, coming into territory after annual assessment 3843
tax lien on personalty—liability of owner 3844
taxation of personalty remaining in territory less than a year 3845
assessment—hearing grievances ... 3846
collector may detain property about be removed 3847
neglect of duty by collector or assessor—penalty 3848
sale of personalty for taxes 3849
grantor and grantee which shall pay taxes 3850

UNIFORM VALUATION OF LIVE STOCK,
board of equalization — meeting — duties 3851
organization of board—its valuation shall control assessments 3852
compensation of members, and clerk of board 3853

Section

REVENUE, TERRITORIAL AND COUNTY—*Continued.*
- TRANSFER OF CERTAIN DELINQUENT TAXES IN SWEETWATER TO FREMONT COUNTY,
  - collector of Sweetwater County shall transmit copy of tax lists to Fremont County 3854
  - certain delinquent taxes shall vest in Fremont County 3855
  - collector of Fremont County shall collect delinquent taxes 3856
  - compensation of collector of Sweetwater County 3857
  - collection of certain delinquent taxes in Sweetwater County 3858

REVERSAL,
- saving of right of action in case of 2380
- of judgments, shall not affect sale 2755

REVISED STATUTES,
- adoption—when to take effect 4269
- repealing provisions—saving of accrued rights 4270
- acts of ninth legislative assembly not affected 4271
- commissioners to prepare for publication 4272
- duties of commissioners 4273
- publication of Revised Statutes 4274
- advertising for bids—award of contract 4275
- appropriation for printing and binding 4276
- clerks of commission 4277
- commissioners shall give bonds 4278
- salary of commissioner 4279
- governor shall inspect books 4280
- distribution of Revised Statutes 4281
- vacancies in commission 4282
- appropriation for contingent expenses 4283
- secretary shall deliver original act to commission 4284
- authentication of Revised Statutes 4285
- when Revised Statutes are in force 4286

REVIVOR,
- OF ACTIONS,
  - abatement of actions by death 2531
  - when action may proceed without revivor 2532
  - court may determine rights of parties 2533
  - revivor in name of personal representatives 2534
  - revivor by appearance or supplemental pleading 2535
  - revivor by conditional order 2536
  - form of order 2537
  - service of order 2538
  - service of order by publication 2539
  - in whose name revived when plaintiff dies 2540
  - in whose name revived when defendant dies 2541
  - in whose name revived when defendant in real action dies 2542
  - limitation of, when defendant dies 2543
  - limitation of, when plaintiff dies 2544
  - action dismissed when it cannot be revived 2545
  - defendant may have action dismissed for want of revivor 2546

Section

REVIVOR—OF ACTIONS—*Continued.*
  - no postponement because of revivor 2547
- OF JUDGMENTS,
  - when dormant 2714
  - limitation on time for 2715
  - when parties die after judgment 2716

REWARD FOR APPREHENSION OF CRIMINALS,
- how offered—regulation 1078, 1082

RIGHT OF ACTION. *See action.*

RIGHT OF PROPERTY,
- trial of, in determining rights of estate of decedent 2047
- trial of, in executions 2792–2794
- trial of, in justice's court 3538–3540

RIGHT OF WAY,
- for ditches in placer mine 1630
- of ditches 1318

RIOT,
- defined—penalties 975, 976

RIVERS,
- declared public highways 3904

ROAD COMPANIES,
- condemnation proceedings by 548

ROAD SUPERVISOR,
- powers and duties 3875–3890

ROADS AND HIGHWAYS,
- ROADS AND BRIDGES,
  - county commissioners shall control road 3859
  - requisites of road petition 3860
  - notice of presenting petition 3861
  - appointment of viewers—survey 3862
  - duties, oath and report of viewers—proceedings by commissioners 3863
  - viewers may administer oaths 3864
  - complaint for damages—appraisers 3865
  - when assessed, shall be paid by county 3866
  - appeal to district court—costs 3867
  - width of roads 3868
  - petition to change road, and proceedings thereon 3869
  - neglect of duty by viewers—penalty 3870
  - petition for private road, and proceedings thereon 3871
  - gates on private roads 3872
  - report of viewers on private road—confirmation by commissioners 3873
  - counties shall be divided into road districts 3874
  - road supervisor—election and term of office 3875
  - oath and bond of supervisor 3876
  - tax levy for road purposes—special road tax 3877
  - refusal to work out special road tax—penalty 3878
  - supervisor shall control labor on roads 3879
  - supervisor shall keep roads in repair 3880
  - road ditches—implements and materials for road work 3881
  - supervisor shall remove obstructions 3882
  - compensation and report of supervisors 3884

Section

ROADS AND HIGHWAYS—ROADS AND BRIDGES—*Continued.*
certificate for extra labor performed 3883
presumptions in actions to recover road tax 3885
malfeasance of supervisor—penalty 3886
compensation of surveyor 3887
parallel roads—water road—timber roads 3888
guide board shall be erected by supervisor 3889
fords—penalty for obstruction 3890
toll bridges shall not obstruct fords 3891
limitation upon constracting for bridge work 3892
obstructing roads or injuring bridge—penalty 3893
restrictions upon damming water in streams 3894
penalty for unlawfully damming water 3895
tax levy 3896
how fines recovered, etc 3897
Albany County may build roads outside of county 3898
Albany County shall pay for roads, outside of county, from road funds 3899
OBSTRUCTING WATER COURSES,
restrictions upon construction of dams and booms 3900
certain booms declared unlawful 3901
ditch owners shall maintain headgate 3902
liability for failure to maintain headgate 3903
water courses declared public highways 3904

ROBBERY,
defined—penalties 892, 893

RULES OF PLEADING,
pleadings to answer, asking relief 2467
allegations, what deemed true and what deemed denied 2468
material allegations defined 2469
presumptions of law, etc., need not be pleaded 2470
copies may be substituted for lost pleadings 2471
when copies shall be filed with pleadings 2472
abbreviated pleadings on instruments for payment of money 2473
what may be stricken from pleadings 2474
allegations may be made definite, by amendments 2475
counter-claim and set-off may be made by separate actions 2476
judgment, how pleaded and proven 2477
conditions precedent, how pleaded 2478
private statutes, how pleaded 2479
libel or slander, how pleaded 2480
answer and proof, in actions for libel or slander 2481
description of realty 2482
pleadings shall be liberally construed 2483
time of filing pleadings 2484
time may be extended 2485
interrogatories 2486
answer to interrogatories 2487

Section

RULES OF PLEADING—*Continued.*
enforcement of answers to interrogatories 2488
pleadings must be subscribed and verified 2489
verification, when not required 2490
when one of several parties may verify 2491
affidavit when sufficient 2492
affidavit of non-resident 2493
affidavit shall be signed and certified 2494
when verification shall not apply to amount claimed 2495
when affidavit may be made by agent or attorney 2496
effect of verification 2497

ROSENDALE, SAMUEL,
legalization of acts of, as notary public 68

ROUND-UPS,
general provisions 4108-4118

SAILORS,
burial by county of indigent 1966, 1968

SALARIES, *See fees and salaries.*

SALE,
of goods on executions 2732-2735
of realty on execution 2736-2764
of shares of corporate stock on attachment 2775-2777
of homestead 2784-2786
of property garnished from railroad companies 2818
of attached property 2903
of realty in partition 2973
of entailed and other estates 3011-3013
of property given for religious use 3018
of unclaimed stolen property 3176-3177
of personalty on execution in justice's court 3519, 3521
of perishable property, attached in justice's court 3550
of realty for taxes 3822-3835
of personalty, for taxes 3849
of mavericks 4112
of live stock, must be evidenced by bill of sale 4125
of impounded swine 4163, 4169
of impounded goats and swine 4169
of estrays 4174

SAWDUST,
penalty for throwing into streams 1023

SCHOOLS,
penalty for malfeasance of officers of 966
tax levy—limitation 3768
money received from sale of estrays shall go into fund of 4176
SUPERINTENDENT OF PUBLIC INSTRUCTION — TEACHERS' INSTITUTE,
librarian shall be superintendent of public instruction 3695
general duties of superintendent 3906
disposition of donated maps, etc 3907
superintendent may grant teachers' certificate 3908
teachers' institute—traveling expenses—notice of meeting 3910
institute shall provide uniform system of education, etc 3911
teachers shall attend institute—payment of expenses 3912

Section

SCHOOLS—SUPERINTENDENT, &c.—*Continued.*
teachers' honorary certificate...... 3909
when teacher excused from attending institute.................. 3913
DUTIES OF COUNTY SUPERINTENDENT,
enumerated duties and powers..... 3914
penalty for failing to make reports. 3915
may grant teachers' certificate for two years—renewals 3916
supervisory an appellate authority.. 3917
SCHOOL DISTRICTS—ORGANIZATION AND POWERS,
notice of formation of new districts. 3918
appeal from superintendents on formation of district 3919
qualifications of electors at school elections..................... 3920
first election of trustees—officers of district 3921
election of trustees, where number increased to six.............. 3923
school district seal................. 3923
oath of directors................... 3924
school district shall be body corporate 3925
regular meetings of district....... 3926
powers of district meeting......... 3927
objects for which money voted, shall be designated........... 3928
meeting may adopt rules of order.. 3929
transfer of school funds........... 3930
manner of conducting elections of trustees...................... 3931
qualifications of electors, in voting for trustees.................. 3932
annual election of trustees—district officers 3933
directors shall qualify............ 3934
meetings of board................. 3935
powers and duties of district board. 3936
authority of board, to admit or remove scholars.............. 3937
when board shall advertise for bids before contracting...... 3938
settlement with treasurer—report to district meeting............ 3939
visiting committee................ 3940
auditing and payment of demands. 3941
special district meetings—requisites of notice 3942
term of existing appointees, to fill vacancy 3943
vacancy in board, how filled 3944
bond of district treasurer.......... 3945
establishment of high schools 3946
separate school for colored children 3947
employment and payment of teachers 3948
school age—compulsory education 3949
liability of parents and guardians—authority of police officers 3950
DISTRICT OFFICERS AND THEIR DUTIES,
directors shall preside at meetings and countersign orders 3951
drawing drafts and orders......... 3952
by whom district shall appear in actions 3953
duties of clerk.................. 3954

Section

SCHOOLS—DISTRICT OFFICERS AND THEIR DUTIES—*Continued.*
clerk shall keep accounts 3955
notice of district meetings 3956
annual report of clerk, to county superintendent 3957
failure to make report—penalty ... 3958
duties of treasurer—publication of report 3959
teachers' fund.................... 3960
school house fund................ 3961
treasurer shall receive district money 3962
treasurer shall furnish statement on request................... 3963
SCHOOL TAX AND ITS COLLECTION,
tax levy for school purposes....... 3964
duty of clerk and assessor as to district taxes.................... 3965
equalization of assessment, and levy of taxes..................... 3966
manner of collecting taxes........ 3967
to whom moneys paid............ 3968
MISCELLANEOUS PROVISIONS,
physiological and hygiene shall be taught..................... 3969
penalty for failing to teach same .. 3970
no discrimination in pay because of sex of teacher............... 3971
examination of teacher, in physiology and hygiene 3972
teachers shall make report 3973
refusal to deliver record to successor—penalty................. 3974
employment of counsel........... 3975
collection and disposition of fines, etc......................... 3976
penalty for officers failing to pay over money.................. 3977
effect of change in county boundaries on school districts...... 3978
district number two in Carbon County abolished 3979
district on Fort Steele military reservation prohibited......... 3980
territorial treasurer, authorized to receive donations for schools.. 3981
liability of treasurer for school money 3982
DISTRICT BONDS,
Albany County, district No. 1, (1882) 3983–3994
Albany County, district No. 1, (1886) 3995–4096
Carbon County, district No. 3, (1886) 4007–4019
Johnson County, district No. 1 (1884) 4020–4033
Uinta County, district No. 1 (1884). 4034–4046
Uinta County, district No. 1 (1886). 4047–4055
Uinta County, district No. 6 (1884). 4056–4066

SCHOOL DISTRICT,
proceedings when surety of treasurer asks to be discharged...... 3046, 3047

SCHOOL LANDS,
relinquishment of, by estate of decedent......................... 2098

Section
SCHOOLS, SUPERINTENDENT OF.
See superintendent of schools.
oath and bond—shall not teach...... 1897
SCIENTIFIC INSTITUTIONS,
exempt from taxation 3771
SCIENTIFIC SOCIETIES,
may incorporate 566
SCURRILOUS MATTER,
may be stricken from pleading, on motion........................ 2476
SEALS,
what may be used as a private....... 27
of supreme court.................. 834
of deputies, of clerks of district court. 848
penalty for defacing and counterfeiting official..................... 935
limitation upon fees for attaching official 1214
of notaries public.................. 1665
defects in notarial, disregarded...... 1672
of commissioners of deeds........... 1676
of territorial auditor and treasurer... 1691
of territorial stenographer........... 1759
of board of penitentiary commissioners 1782
of county commissioners 1802
of probate court.................. 1970
of school district................. 3923
territorial......................... 4067
SEALER OF WEIGHTS AND MEASURES,
general duties..................4218–4224
SEARCH WARRANT,
general provisions..............3168–3177
SEAT OF GOVERNMENT,
located at Cheyenne............... 4068
SECRET SOCIETIES,
exempted from general insurance laws......................... 624
incorporation regulations of.......589–596
SECRETARY, TERRITORIAL,
shall give notice of elections......... 1090
shall give notice of existing vacancies in certain offices............... 1091
shall give notice of expiration of term of legislators................. 1092
shall send messenger for returns of elections, when delayed......... 1130
shall be a member of territorial canvassing board................. 1131
shall deliver copy of notice of legislative contest to presiding officer. 1143
enumeration of fees allowed......... 1178
when, may charge fees 1179
shall furnish certified copy.......... 1180
duties in publication and distribution of laws..................1420, 1429
shall attest commissions of notaries public........................ 1662
shall give notice of appointment, of commissioners of deeds......... 1677
shall indorse and file bonds of auditor and treasurer................. 1689
shall cause settlement of accounts of former auditor and treasurer to be made, when................ 1723
certificate of, as evidence.......... 2593
SECURITY,
for costs in civil actions.........2687–2691

Section
SEDUCTION,
defined.......................... 989
proof necessary in cases of.......... 3296
SENTENCE,
of felon........................3319–3323
SERVICE. *See constructive service.*
of writ in *habeas corpus* proceedings.. 1276
of notice of trial of right to water.... 1346
of notice in case of appeal........... 1349
of notice of sale of personalty upon lien.......................... 1474
of notice of lien upon mines......... 1505
of process against counties.......... 1796
probate court upon non-resident executor....................... 2239
entry of clerk shall be evidence of return of........................ 2348
the commencement of the action.... 2376
upon person avoiding, or a non-resident, may be made by publication 2404
in civil actions..................2422–2434
of summons, by special appointment, in distance more than fifty miles 2428
manner and return of.......... 2429
what equivalent to.................. 2430
upon a corporation................. 2431
on insurance companies............ 2432
on foreign corporations.............. 2433
on minors......................... 2434
of order of revivor............2538, 2539
of subpœna........................ 2594
manner of serving subpœna......... 2597
of notice to take deposition.......... 2621
of summons in application for new trial 2656
of notice of garnishment against railroad companies................ 2814
of notice of attachment............. 2878
of order of garnishment............. 2882
of injunction granted during litigation 2926
of notice of motion for amercement.. 2943
of writ of *mandamus*............... 3079
of summons in *quo warranto* proceedings.......................... 3102
of summons in error............... 3132
of process on witnesses in criminal actions....................3289, 3290
of summons on jurors.............. 3390
of summons in justice's court...3425–3429
of writ of replevin in justice's court.. 3525
upon garnishee, in justice's court.... 3546
in justice's court, of summons in actions for forcible entry and detainer......................... 3577
SESSION LAWS. *See laws.*
SET-OFF,
in suits by territory 1705
right of, not affected by assignment.. 2382
may be demurred to 2455, 2456
may be set forth in answer 2458
costs in subsequent suits upon....... 2460
requisites of...................... 2462
new party to...................... 2463
assignment or death cannot affect right of......................... 2464
may be made a separate action....... 2476
offer to confess judgment to......... 2530
affects dismissal.................... 2661
not affected by dismissal............ 2662

Section

SET-OFF—*Continued.*
  - judgment upon.................... 2676
  - in justice's court.................3436–3440
  - of judgment in justice's courts..3480–3482

SEX,
  - no discrimination in pay of teacher on account of 3971

SHEEP. *See stock, live.*

SHERIDAN, TOWN OF,
  - corporate limits and name 348
  - general corporate powers 349
  - by whom exercised.................. 350
  - elective officers..................... 351
  - annual election 351
  - appointive officers—bonds—compensation 352
  - annual tax 353
  - manner of conducting elections 354
  - notice of elections 355
  - vacancy in elective offices........... 356
  - special meetings of trustees.......... 357
  - special elections 358
  - qualifications of voters 359
  - time of opening and closing polls 360
  - inspectors of election, how governed. 361
  - appointment of inspectors 362
  - regular meetings of trustees......... 363
  - oath of officers 364
  - duties of mayor—casting vote....... 365
  - warrants, how signed and attested... 366
  - approval and veto of mayor.......... 367
  - advisory powers of mayor........... 368
  - officers shall exhibit accounts, etc., to mayor........................ 369
  - police justice—jurisdiction—fees.... 370
  - penalties for municipal offenses...... 371
  - mayor may remit fines.............. 372
  - appeals from police justice to district court......................... 373
  - contempt in police court............. 374
  - enumeration of specific corporate powers 375
  - passage and recording of by-laws and ordinances.................. 376
  - style of ordinances—publication 377
  - complaint to recover fines 378
  - commitment and employment of offenders 379
  - prosecution for violating ordinances. 380
  - proof of municipal organization...... 381
  - ordinances, how proved............. 382
  - recovery and disposition of fines..... 383
  - trustees' meeting—journal........... 384
  - presentation and verification of claims 386
  - limitation on municipal indebtedness. 387
  - bonds of officers..................... 388
  - delivery of corporate property to successors 389
  - amount of annual tax, when determined 390
  - duties of assessor................... 391
  - board of equalization................ 392
  - tax levy 393
  - tax warrant—tax liens 394
  - collection of taxes—tax deed........ 395
  - treasurer's duties and compensation.. 396
  - publication of annual statement...... 397
  - town warrants 389
  - clerk's deputies..................... 399
  - powers of marshal.................. 400

Section

SHERIDAN, TOWN OF—*Continued.*
  - duties of street supervisor........... 401
  - duties of fire wardens.............. 402
  - jurisdiction of trustees.............. 403
  - additions to town................... 403
  - powers of policemen................ 404
  - execution of conveyances by town... 405
  - eminent domain.................... 406
  - time when officers shall enter upon duties.......................... 407
  - trustees to control officers.......... 408
  - compensation of officers............ 409
  - elections shall be by ballot......... 410

SHERIFF,
  - may conduct foreclosure sale of realty 40, 43
  - in assignments, shall serve notices—fees,.......................... 116
  - offenses against public justice.....940–969
  - shall notify judges of election of their appointments 1098
  - when elected....................... 1083
  - vacancy in office of, how filled 1175
  - salary and fees of.................. 1182
  - traveling expenses of 1183
  - shall pay costs collected to clerk..... 1223
  - shall serve notice of trial of right of water.......................... 1346
  - duties respecting jails..........1368—1380
  - duties in collection of county licenses 1433, 1451
  - gaming license money shall be paid to 1462
  - may call militia, when.............. 1613
  - duties, when warrants of distress issued against delinquent collectors......................1700, 1702
  - shall give clerk description of convicts,.......................... 1787
  - shall transport convicts to territorial prisons......................... 1789
  - term of office—oath and bond 1858
  - under sheriff—oath, etc............ 1859
  - deputy sheriffs—appointment, etc.... 1860
  - deputy sheriffs in Albany County ... 1861
  - deputy sheriff and jailor in Johnson County 1862
  - special deputies — appointment by commissioners 1863
  - control of specials—revocation of appointment 1864
  - oath and compensation............. 1865
  - qualifications....................... 1866
  - sheriff to have custody of jails....... 1867
  - process to be executed by sheriff and deputies 1868
  - sheriff and deputies to be peace officers.......................... 1869
  - service of process on sheriff 1870
  - further duties of sheriff............ 1871
  - shall keep office at county seat...... 1901
  - shall appoint fire wardens........... 1919
  - shall arrest persons practising as physicians without authority 1929
  - shall execute process from probate court 1973
  - shall make application for guardianship of lunatics and drunkards .. 2290
  - shall endorse on writ time of receipt. 2356
  - if a party, coroner shall serve process 2357

Section

SHERIFF—*Continued.*
- general duties of 2359
- summons shall be directed to 2424
- may appoint person to serve process, when more than fifty miles 2428
- may serve notices of motions 2511
- shall have custody of jurors in civil cases 2552
- may serve subpœna 2594
- property of, may be sold under execution without valuation 2739
- shall endorse returns on execution 2741
- duty, when money made without sale of realty 2742
- may act as master commissioner 2746
- shall not forward money by mail 2768
- attending court, privileged from arrest in civil actions 2805
- liability as bail, in civil actions 2856, 2857
- shall execute order of attachment 2876
- may be appointed receiver of property of judgment debtor—undertaking 2833
- shall serve order of injunction 2926
- shall make conveyance in partition 2971
- liability of, in distribution of proceeds of partition 2975
- shall assist in drawing jury for trial concerning occupying claimants. 2994
- duties in replevin 3024–3028
- shall arrest criminals 3178
- may take recognizance in misdemeanors 3206
- shall serve subpœna in criminal actions 3289
- authority of, in conveying convict 3328
- shall execute death penalty 3334
- duty in drawing jurors 3384–3387
- shall summon jury 3390
- penalty for corruptly summoning juror 3394

SLANDER,
- action for, shall not survive 2061
- limitations upon actions for 2372
- how pleaded 2480
- answer and proof in actions for 2481
- abatement of actions for, by death 2531

SODOMY. *See nature, crimes against.*

SOLDIERS,
- burial by county, of indigent 1966-1968

SOLE LEGATEE. *See legatee.*

SPECIALTIES,
- limitation of actions upon 2369

SPECIAL PARTNERSHIPS. *See partnerships, special.*

SPECIAL PROVISIONS,
- shall govern in civil code 2346

SPECIFIC PERFORMANCE,
- venue of actions to compel 2413

STABLE KEEPER,
- shall not use animals without consent of owner 1055

STAGE COMPANIES,
- venue of actions against 2416

STALLIONS,
- shall not run at large 4135
- when estray—duty of person finding. 4180

STATUTES, PRIVATE,
- how pleaded 2479

STAY OF EXECUTION,
- in procedings in error 3136, 3142, 3143

Section

STAY OF EXECUTION—*Continued.*
- in justice's court 3513–3518

STEALING,
- live stock—penalty 4140

STENOGRAPHER, TERRITORIAL,
- appointment and qualifications 1755
- term of office—salary 1756
- official designation 1757
- oath of office—removal 1758
- official seal—authentication of transcripts 1759
- salary and mileage, how paid 1760
- when shorthand report of testimony can be taken—transcriptions 1761
- fees, and the payment thereof 1762
- fees to be taxed as costs 1763
- when county liable for fees 1764
- certified transcriptions, deemed *prima facie*, correct 1765
- stenographer may take depositions 1766
- appointment of stenographer for term 1767
- compensation and fees 1768

STOCK, CORPORATE,
- shares of, subject to levy 2772
- sale of, under levy 2775
- shares pledged as collateral not affected by levy 2779

STOCK, LIVE
- penalty for altering marks and brands 907
- detectives, shall be game detectives .. 1263
- shall be protected from mines 1638
- rewards for the apprehension of stock thieves 1081
- water roads for 3888
- assessment and valuation of 3843–3853
- BRANDS,
  - who shall have a brand—brand record 4094
  - person cannot adopt brand of another 4095
  - when stock shall be branded, and when branding prohibited 4096
  - penalty for recording brand of another 4097
  - clerk recording same brands to two persons—penalty 4098
  - misbranding stock—penalty 4099
  - stock grower defined—shall brand—transfer of brands 4100
  - misbranding or defacing brands—penalty 4101
  - stock drover defined—shall brand stock 4102
  - brand committee—authority to reject brands 4103
  - proceedings when branded stock brought into county 4104
  - conflicting brands—rules for determining 4105
  - penalty for violating brand law 4106
- MAVERICKS AND ROUND-UPS,
  - mavericks defined 4107
  - round-ups shall be controlled by Stock Growers Association 4108
  - duties of foreman of round-up—vacancy 4109
  - care and branding of cattle of unknown owner 4110
  - branding of mavericks—report of foreman 4111

Section
STOCK — Mavericks and Round-ups—*Continued.*
  sale of mavericks—return of proceeds—bond of foreman 4112
  bills of sale of mavericks sold 4113
  disposition of proceeds—compensation of owner—membership in association 4114
  when branding mavericks unlawful 4115
  returns of round-up foreman subject to inspection 4116
  change of round-up district—form of foreman 4117
  penalty for violating maverick law 4118
 Restrictions upon Stock Men, and Offenses against Stock Laws,
  stock drover failing to separate domestic stock in herd—penalty 4119
  drover keeping herd near ranch—penalty 4120
  driving cattle off their range—penalty 4121
  permitting stock to mix, or trespass on land, unlawful 4122
  unlawfully driving off stock deemed larceny 4123
  drover shall separate domestic stock from herd 4124
  bill of sale must be given on sale of stock 4125
  restrictions upon purchasing or slaughtering cattle, and on selling hides 4126
  butchers shall exhibit hides of slaughtered cattle 4127
  who may remove hides from carcass 4128
  when hides shall be kept twenty days 4129
  penalty for unlawful slaughtering of cattle 4130
  running cattle with dog—penalty .. 4131
  proceedings to exterminate vicious dogs 4132
  cattle destroying hay may be driven with dogs 4133
  owner may drive with dogs 4134
  restrictions upon permitting stallions to to run at large 4135
  restrictions upon bulls running at large in Albany County—penalty 4136, 4137
  bulls may be taken up as estrays... 4138
  further limitations in Albany County 4139
  stealing, embezzling, killing or unlawfully purchasing live stock 4140
  description of neat cattle in indictment, etc 4141
  presumptions in criminal cases concerning neat cattle 4142
  stock detective—compensation and rewards 4143
 Sheep,
  appointment of sheep inspector 4144
  inspection of diseased sheep—report 4145
  person bringing sheep into county shall report same for inspection 4146

Section
STOCK—Sheep—*Continued.*
  restrictions upon herding diseased sheep 4147
  owner shall grant facilities for inspection—penalty 4148
  bond and oath of inspector 4149
  recording oath and bond—action on bond 4150
  inspector shall keep record 4151
  compensation of inspector 4152
  annual inspection and report of inspector 4153
  petition for appointment of inspectors 4154
  appointment of deputy inspectors . 4155
  inspector making false report—penalty 4156
  commissioners may remove inspector 4157
  restrictions upon driving diseased sheep over land of another 4158
  precautions against mixing sheep .. 4159
 Swine and Goats,
  swine shall not run at large 4160
  penalty for allowing swine to run at large 4161
  notice to owner when swine found at large 4162
  sale of impounded swine—notice .. 4163
  swine and goats shall not run at large in towns, etc 4164
  sale of impounded goats, etc—notice 4165
  bill of sale shall be given 4166
 Wind River Valley Stock Growers Association,
  of whom association shall consist .. 4167
  shall be body corporate 4168
  boundaries of stock range 4169
 Estrays,
  when and by whom estrays taken up 4170
  description of estray, shall be recorded and advertised 4171
  how estrays reclaimed before sale . 4172
  arbitration of dispute concerning expense 4173
  appraisement — notice and sale—disposition of proceeds 4174
  place of sale 4175
  disposition of money 4176
  matters considered on appraisement 4177
  fees of appraisers, and justice 4178
  by whom costs paid 4179
  estray stallions and jacks 4180
  liability for death of estray 4181
 Fences,
  lawful fence in certain counties .. 4182
  lawful fence in other counties 4183
  maintenance of partition fence 4184
  liability for damages by breachy animals—arbitration 4185
  who considered owner of an enclosure 4186
  notice to owner when damage done 4187
  retention of animals to secure payment 4188
  proof and judgment for damages .. 4189
  proceedings when defendant is unknown 4190

Section

STOCK—FENCES—*Continued.*
certain other fences considered lawful ... 4191
other lawful fences ... 4192
penalty for destroying fences, etc. . 4193
liability for damage, by unlawful wire fence ... 4194
INDEMNITY FOR STOCK KILLED BY RAILWAYS,
liability for injury to stock ... 4195
company shall notify owner of injury to stock ... 4196
owner shall make sworn statement of value—payment by company 4197
term "live stock" defined ... 4198
VETERINARIAN—CONDEMNATION OF DISEASED STOCK,
appointment of veterinarian—oath—qualifications—term of office 4199
duties of veterinarian ... 4200
authority to quarantine ... 4201
diseased animals shall be slaughtered ... 4202
appraisement—burning up carcass. 4203
annual report of veterinarian ... 4204
importation of stock, may be restricted ... 4205
notice of disease to veterinarian—penalty for concealment ... 4206
regulations in case of disease—animals in transit ... 4207
claims against territory—procedure—restrictions ... 4208
compensation of arbitrators ... 4209
claims rejected by veterinarian, shall be arbitrated ... 4210
compensation of veterinarian and others — deputy — contingent fund bond of veterinarian ... 4211
liability of territory limited to appropriation ... 4212
special tax to pay indemnity ... 4213
STOLEN GOODS,
penalty for receiving ... 905
SUBMISSION,
of controversy to court ... 2570
SUBORNATION. *See perjury.*
SUBPŒNA. *See witnesses.*
all witnesses demanded at one time shall be named in one writ ... 1213
how procured and served in civil cases ... 2594
contents of—*duces tecum* ... 2595
on taking depositions ... 2596
manner of serving ... 2597
service of, in criminal actions ... 3289–3290
in justice's court, in civil actions . 3449–3451
SUBROGATION,
of garnishee, as plaintiff ... 2900
of sureties ... 3041
of officer to right of judgment plaintiff ... 2948
SUBSTANTIAL JUSTICE,
a rule in construing pleadings ... 2483
SUCCEEDING OFFICER,
may make deed in partition ... 2977
SUFFERANCE,
the only tenancy implied ... 1386
SUITS IN EQUITY. *See action, form of.*

Section

SUMMONS. *See writs.*
sheriff shall execute ... 2359
issued on filing of petition and precipe 2422, 2423
requisites of—to whom directed ... 2424
when issued to another party ... 2425
when returnable ... 2426
alias summons ... 2427
who may serve—special appointment 2428
service and return of ... 2428
what equivalent to service of ... 2430
service upon corporations ... 2431
service on insurance companies ... 2432
service on foreign corporations ... 2433
service on minors ... 2434
cannot be served on witness ... 2607
in application for new trial ... 2656
in *quo warranto* proceedings ... 3102
in error ... 3131, 3133
of jurors ... 3390
in justice's court ... 3424
in replevin in justice's court ... 3524
in justice's court in actions for forcible entry and detainer ... 3577
SUNDANCE,
site of court house ... 737
SUNDAY,
unlawful to sell liquor on ... 1034
when excluded in computing time ... 2341
SUPERINTENDENT OF PUBLIC INSTRUCTION,
duties and powers of ... 3905–3915
appeal to, from county commissioners on formation of school district ... 3919
SUPERINTENDENT OF SCHOOLS,
when elected ... 1083
vacancy in office of, how filled ... 1175
compensation of ... 1196
oath and bond—shall not teach ... 1898
shall attend teachers' institute ... 3910
enumerated duties and powers ... 3914–3917
duties in organizing school districts. 3918, 3919
shall establish high schools ... 3946
shall make complaint against parents for detaining children from school 3950
shall report failure to teach physiology, etc. ... 3970
SUPPLEMENTAL PLEADINGS,
when allowed ... 2506
revivor by ... 2535
SUPREME COURT,
admission of attorneys to ... 121–125
disbarment of attorneys from ... 126–136
terms of ... 823
adjournments ... 824
transaction of business at adjourned term ... 825
rules of practice and forms of process 826
process, testation and execution ... 827
opinions shall be in writing ... 828
publication of synopsis of opinions ... 829
appointment of reporter ... 830
filling vacancy in office of reporter ... 831
causes not disposed of shall stand continued ... 832
justices shall not practice law ... 833
seal ... 834
clerk—oath and bond ... 835
deputy clerk—appointment and oath. 836

Section

SUPREME COURT—*Continued.*

- appointment of deputy, when made—record of........ 837
- clerks liable for acts of deputy........ 838
- appeals to, in election contest cases.. 1156
- clerk of, fees........ 1185
- may allow writ of *habeas corpus*........ 1266
- appeal to in water right proceedings—decree........ 1348, 1351
- appeal to, in settlement of adverse claims on town sites........ 1393
- may release imprisoned witness........ 2603
- proceedings to vacate or modify judgments in........ 2712
- lien of judgments of........ 2723
- may grant injunction........ 2921
- appeal to, in contest of wills........ 3064
- may issue writ of *mandamus*........ 3074
- may order *quo warranto* proceedings.. 3094
- jurisdiction of, in error........ 3128
- action of, upon bills of exception, in criminal actions........ 3309, 3310
- appeal to, from district court, in criminal cases, from justices of the peace........ 3632, 3663

SURETY. *See bonds.*

- for costs in civil actions........ 2687, 2691
- form of judgment against........ 2765
- of officer may be made party to judgment of amercement........ 2947
- may surrender defendant........ 3211
- liability of, in undertaking on appeal from justice's court........ 3496
- RIGHTS AND REMEDIES OF,
  - sureties may require creditors to sue........ 3038
  - representatives of sureties shall have same right........ 3039
  - limitation — personal representatives, officers, etc........ 3040
  - rights of surety on paying judgment 3041
  - sureties of county officers, may be discharged........ 3042
  - duties of county commissioner........ 3043
  - sureties of other officers may ask to be discharged........ 3044
  - proceedings........ 3045
  - application for discharge by surety of school district treasurer.. 3046
  - proceedings by commissioners........ 3047
  - application for discharge by surety of other officers........ 3048
  - proceedings by commissioners........ 3049
  - surety may compel principal to pay debt........ 3050
  - action by surety for indemnity before debt due........ 3051
  - surety may obtain provisional remedies........ 3052

SURGEONS. *See physicsans and surgeons.*

SURVEYORS, COUNTY,

- duties in case of disputed county boundary lines........ 670–671
- when elected........ 1083
- vacancy in office of, how filled........ 1175
- fees of........ 1193
- official survey of ditches by........ 1362–1365
- term of office—oath and bond—deputy 1889
- shall make county surveys and plats. 1890

Section

SURVEYORS, COUNTY—*Continued.*

- shall make private surveys—certificate as evidence........ 1891
- records, field notes and plats........ 1892
- shall survey roads........ 3862, 3863

SURVIVAL OF ACTIONS. *See actions, survival of. See revivor.*

SWEETWATER COUNTY,

- cannot aid railroad companies........ 565
- boundaries of........ 667
- county seat of, at Green River........ 668
- in third judicial district........ 839
- abstract to be made and perfected—restoring lost records........ 1855–1857
- transfer of certain delinquent taxes in, to Fremont County........ 3854–3858
- shall not have stock detective........ 4143
- lawful fence in........ 4182
- SPECIAL TAX LEGISLATION FOR,
  - authority to levy special tax........ 758
  - limitation upon issuing warrants and contracting debts........ 759
  - restrictions upon paying collector.. 760
  - collector to present verified claim.. 761
  - claim of G. L. Vickery for 1882........ 762

SWINDLING,

- in mines—penalty........ 1637

SWINE. *See stock, live.*

TALESMEN,

- in trial of action of occupying claimants........ 2996

TAX. *See revenue.*

- cities and towns, levy and collection of in........ 481–483
- delinquent tax lists shall be published 1815
- actions for relief against illegal. 3053–3056
- apportionment of school........ 3914

TAX DEED,

- when and how made........ 3831–3832

TAX LEVY. *See revenue.*

- to pay apportionment of indebtedness to old county........ 683
- for county libraries........ 684, 685
- to pay Carbon County court house bonds........ 704
- for Fremont County court house bonds 725
- for Crook County court house bonds 746
- special in Sweetwater County........ 758
- Johnson County court house bonds.. 772
- for jail bond fund, Uinta County........ 791
- to pay Uinta County funding bonds.. 803
- for paying for jails, in counties........ 1385
- to pay judgments against counties... 1798
- for poor house in Laramie County... 1963
- when compelled by *mandamus*........ 3089
- to pay interest upon and redeem capitol building and university bonds 3687–3689
- for university income........ 3716
- to pay interest upon and redeem insane asylum bonds........ 3753, 3754
- for roads and highways........ 3896
- for school purposes........ 3964–3966
- territorial, to pay stock indemity.... 4213

TAX TITLE,

- sufficient to protect occupying claimant........ 2993

TEACHERS,

- shall be examined........ 3914
- certificate of........ 3908, 3909, 3916

Section

TEACHERS—*Continued.*
- shall attend institute—expenses 3912
- when excused from attending institute 3913
- employment and payment of 3948
- no discrimination in pay on account of sex 3971
- must pass examination in physiology and hygiene 3972

TEACHERS' INSTITUTE,
- general provisions 3910-3913

TELEGRAPH COMPANIES,
- may incorporate 541
- condemnation proceedings by 548

TELEGRAPH LINES,
- assessment of 3839-3842

TEMPERANCE,
- shall be taught in public schools 3962-3972

TENANCY,
- by sufferance, the only one implied 1386

TENANT FOR LIFE OR YEARS,
- conveying greater estate—effect 4

TENANTS IN COMMON,
- partition of estate of 2962-2984

TENDER,
- plea of, of money before suit 2524
- of performance or thing, before suit 2525
- of taxes, in proceedings to enjoin illegal collection of 3056

TENEMENTS, *See realty.*

TERMS OF COURT,
- of supreme court 823
- in district courts 841-843
- of probate court 1969
- at which actions are triable 2522
- of probate court, how long continuing 2712

TERRITORIAL OFFICERS,
- inspector of coal mines 1647
- attorney general 1679
- auditor and treasurer 1686
- librarian 1736
- stenographer 1755
- insurance commissioner 1769
- geologist and mining engineer 1772
- penitentiary commissioners 1777
- commissioners of pharmacy 1934
- capitol building commissioners 3666
- university building commissioners 3676
- trustees blind, deaf and dumb asylum 3726
- insane asylum building commissioners 3740
- superintendent of public instruction 3905
- superintendent of weights and measures 4214
- commissioners to prepare for publication the Revised Statutes, of Wyoming 4272

TESTIMONY: *See evidence.*
- in mitigation of sentence 3321
- MODES OF TAKING,
  - modes of taking testimony prescribed 2609
  - kinds of testimony defined 2610
  - use of affidavits 2611
  - affidavit, before whom made 2612
  - depositions, when may be used 2613
  - depositions, when may be taken 2614
  - testimony before referee, etc., use of as deposition 2615
  - depositions in foreign suits 2616
  - before whom taken out of territory 2618

Section

TESTIMONY—MODES OF TAKING—*Continued.*
- before whom depositions taken in the territory 2617
- before whom depositions shall not be taken 2619
- commission to take depositions 2620
- notice to take depositions—service 2621
- notice by publication, to take depositions 2622
- by whom depositions shall be written 2623
- transmission of depositions to clerk 2624
- depositions may be used before justice, referee, etc 2625
- when depositions may be used in other actions 2626
- authentication of deposition 2627
- certificate of officer 2628
- condition upon which deposition may be read 2629
- time of filing deposition 2630
- fees for taking deposition 2631
- exceptions to depositions shall be in writing 2632
- exceptions when made and filed 2633
- exceptions shall be decided before trial 2634
- waiver of right to except to depositions 2635
- PROCEEDINGS TO PERPETUATE,
  - perpetuation of testimony 3066
  - requisites of petition 3067
  - order for examination 3068
  - cross interrogatories 3069
  - taking and filing testimony 3070
  - approval of depositions—when competent evidence 3071
  - applicants shall pay costs 3072

TESTAMENT. *See wills.*

TERRITORY,
- condemnation proceedings by 499
- shall aid fair associations 579
- shall own maps of coal mines 1640
- claims against, when and how presented 1704
- set-offs in suits by 1705
- official bonds payable to 1907
- bond of sole legatee shall be to—action in name of 2239
- verification of pleadings, when a party 2489
- documents of, how proven 2593
- execution in cases of individuals indebted to 2738
- *quo warranto* proceedings may be brought in name of 3092
- property of, exempt from taxation 3771
- great seal of 4067
- claims against, for condemnation of live stock 4208
- liability limited to appropriation 4212
- PUBLIC BUILDINGS OF,
  - capitol building, at Cheyenne 3665
  - university building, at Laramie 3675
  - blind, deaf and dumb institute, at Cheyenne 3725
  - insane asylum, at Evanston 3739

TERRITORIAL TREASURER. *See treasurer, territorial; see auditor treasurer.*

Section

THANKSGIVING DAY,
a legal holiday...................... 1430
THIRD PERSONS,
may be made parties 2403
order for, to appear in interpleader... 2405
trial of right of personalty of, in executions.................. 2792–2794
rights of, in sale of realty of judgment debtor.................. 2834
rights of, in attachment............. 2906
disposition of property of, during litigation, concerning, same........ 2940
rights of, in justice's court. 3538–3540, 3551
estoppel of, in contracting with special partnership 4089
TIMBER. *See logs.*
liens upon, how paid—identification. 1483, 1484
TIME. *See limitations.*
how computed...................... 2341
of commencing civil actions 2363, 2381
in which pleadings may be filed..... 2484
to file pleadings may extended by court......................... 2485
to answer to amended petition 2498
to amend after demurrer filed........ 2499
may be extended for trial after amendments to pleadings....... 2504
of trial of civil action 2519–2523
for return of execution 2764
of filing deposition 2630
within which motion can be made for new trial...................... 2654
within which petition can be made for new trial.................. 2656
in which exceptions may be reduced to writing.................... 2646
of imprisonment of debtor before judgment...................... 2803
of service of notice of motion for amercement 2943
allowed for examination of indictments 3260
for executing death penalty 3333
legal standard of 3414
for appearance in justice's court..... 3431
for which stay granted, in justice's court 3514
when county commissioners shall furnish assessor with plats of lands entered under United States laws.................... 3776
when property shall be listed for taxation...................... 3784
when county commissioners shall furnish assessor with assessment roll.............................. 3795
when assessor shall return assessment roll.............................. 3796
when assessor shall list property for taxation, if owner fails.......... 3797
when board of county commissioners shall sit as board of equalization. 3801
when territorial board of equalization shall meet...................... 3804
when territorial board of equalization shall notify county clerks of rate of tax 3805
of making tax levy 3806
when county clerk shall deliver tax list to collector 3807

Section

TIME—*Continued.*
when taxes become due............ 3809
when taxes become delinquent...... 3809, 3810, 3819
when county treasurer shall make settlement with commissioners..... 3837
when railway and telegraph companies shall list property for taxation... 3839
when territorial board of equalization shall assess railway and telegraph lines 3839
when auditor shall certify to county clerks the assessment of railway and telegraph lines 3839
when personalty coming into territory shall be assessed.......3843, 3845
when complaints against assessment shall be filed 3846
when grantor and when grantee shall pay taxes 3850
when county commissioners shall meet to fix uniform value of live stock 3851
of apportionment of school money .. 3914
of school district meeting 3926
of election of school trustees 3933
to brand stock...................... 4096
when estrays may be taken up...... 4170
TITLE. *See clouds from title.*
of causes shall be changed, except in error.......... 2445
actions to quit 2985–2991
TOLL BRIDGES,
shall not obstruct fords 3891
TOOLS,
exemptions of 2790
TORTS,
right of action for, what survive. 2060, 2061
limitations upon actions for.......... 2371
joinders in actions upon 2408
TOWNS. *See cities and towns.*
TRANSFER. *See assignment.*
TREASON,
proof, in cases of 3298
TREES,
tax exemptions to cultivators of. 3772–3775
TREASURER, COUNTY. *See probate judge.*
duty regarding bonds issued to railroads—fees.................. 556, 557
refusal to pay warrants—penalty..... 970
when elected...................... 1083
vacancy in office of, how filled....... 1175
fees of........................... 1188
duty in respect to licenses 1436, 1451
shall pay stenographer, when........ 1764
in *madamas* proceedings, shall levy and assess tax............ 3089, 3090
may collect from parents for care of blind, deaf and dumb children... 3735
fees in collection of delinquent taxes. 3811
shall publish list of unpaid warrants. 3816
shall give notice of sale of realty for taxes......................... 3822
shall give certificate of purchase of realty at tax sale............... 3827
shall give certificate of redemption, of realty redeemed after sale for taxes 3830
shall make tax deed...........3831, 3832

Section
TREASURER, COUNTY—*Continued.*
liable for making unlawful tax sale .. 3833
shall make annual settlement with commissioners 3837
shall pay money out of school fund to district treasurer 3945
shall hold school money subject to draft....................3964, 3968
TREASURER, TERRITORIAL. *See auditor and treasurer.*
penalty for refusing to pay warrants. 970
shall be a member of territorial canvassing board 1131
settlement with, by county treasurers 1832
authority and duties in issuing and paying capitol building and university bonds.............. 3673–3692
duties respecting insane asylum bonds 3748–3759
shall bring action against counties, for delinquent taxes 3837
shall be a member of territorial board of equalization.............3804, 3839
shall receive donations for schools—liability....................3981, 3982
shall pay stock indemnity warrants.. 4208
TRESPASS,
limitations upon actions for 2371
TRIAL,
by referees 2373–2581
preliminary provisions 2514–2547
conduct of a trial...............2548–2587
evidence 2588–2644
exceptions 2645–2651
new trial.......................2652–2656
by master commissioners........2582–2587
by jury in civil cases 2549–2566
by the court....................2567–2572
in criminal actions—general provisions 3300–3313
in justice's court...............3461–3473
TRIERS,
fees of 1197
of challenges to jurors in capital cases 3281
TRUSTEES,
of express trust, may bring action.... 2384
appointed by court to defend for insane person 2389
venue of actions against............. 2420
when corporation dissolved in *quo warranto* proceedings.......3113–3115
of school districts...............3921–3963
TRUST DEEDS. *See deeds of trust.*
TRUST PROPERTY,
disposition of, during litigation...... 2940
TURNER, A. G.,
legalization of acts of as register of deeds of Carter County......... 65
TURNPIKE COMPANIES,
value of actions against 2417
UINTA COUNTY,
boundaries of...................... 669
in third judicial district............. 839
limit on school tax................. 3927
school district No. 1, bonds (1884).... 4034–4056
school district No. 1, bonds (1886).... 4047–4055
school district No. 6, bonds (1884)4056–4066
lawful fence in.................... 4182

Section
UINTA COUNTY—*Continued.*
Jail Bonds,
authority to issue bonds........... 785
contracting power given commissioners....................... 786
terms of bonds.................... 787
registration of bonds.............. 788
execution and sale of bonds....... 789
interest coupons and their payment 790
bond tax......................... 791
notice to bondholders of intended payment...................... 792
redemption of bonds.............. 793
pledge of taxable property........ 794
custody of funds—treasurer shall give separate bond............ 795
compensation of clerk and treasurer 796
payment of preliminary expenses. 797
bond election 798
result of election................ 799
Funding Bonds,
authority to issue................ 800
registration of.................... 801
interest coupons.................. 802
tax levy.......................... 803
redemption of bonds 804
time and place of payment........ 805
notice of redemption of bonds..... 806
when interest ceases 807
pledge of taxable property........ 808
sale of bonds..................... 809
custody of funds—treasurer's commission 810
treasurer shall give separate bond.. 811
payment of preliminary expenses.. 812
construction of bond statute....... 813
restrictions upon contracting debts. 814
Hospital Bonds,
authority to erect hospital and issue bonds 815
registration of bonds.............. 816
pledge of taxable property......... 817
redemption of bonds.............. 818
committee to construct building... 819
conveyance of hospital to sisters of charity...................... 820
use and maintenance of hospital... 821
construction of statute authorizing construction.................. 822
UMPIRAGE. *See arbitration.*
UNKNOWN PARTIES,
proceedings against, in enforcement of judgment.................. 2713
UNDERTAKING. *See bonds.*
on appeal in water right proceedings. 1348
by execution plaintiff, to stay judgment in trial of right of property. 2794
of judgment debtor under arrest..... 2822
of sheriff, when acting as receiver of property of judgment debtor.... 2833
further security in attachment....... 2909
in attachment before debt due....... 2916
in injunction...................... 2924
of receiver....................... 2937
in replevin....................... 3025
in injunction proceedings to restrain collection of taxes............. 3056
of trustees of dissolved corporation.. 3113
restitution—proceedings in error..... 3140
in change of venue................ 3401

Section
UNDERTAKING—*Continued.*
to stay execution, in proceedings in error..................3136–3139, 3142
on appeal from justice's court........ 3487
in justice's court—plaintiff may sue upon......................... 3512
in justice's court, to stay executions. 3513, 3518
in replevin in justice's court......... 3526
in attachment in justice's court...... 3542
to discharge attachment in justice's court......................3556, 3557
in justice's court, on appeal in criminal cases..................... 3655
UNITED STATES,
prisoners of—in custody of sheriffs... 1375
officers of, need not be jurors........ 3376
property of, exempt from taxation... 3771
United States commissioner, *see commissioner U. S.*
UNITED STATES MARSHAL,
issue of process to.................. 2424
UNIVERSITY. *See colleges. See capitol building and university.*
UNIVERSITY LANDS,
appointment of commission to locate 3719
vacancy in office of commissioner... 3720
duty of commissioner............... 3721
fees of commissioner................ 3722
appropriation........................ 3723
application of appropriation......... 3724
UNSOUND MINDS. *See insanity.*
VACATION,
of orders of probate court........... 2159
of judgments, etc.—ground for...... 2652
of judgments..................2701–2708
of satisfaction of judgment.......... 2758
of judgment in justice's court, in civil actions................3474–3479
VAGRANCY,
defined—penalty..................... 1025
sentence for, in justice's court....... 3647
VARIANCE,
when material—amendment......... 2642
amendment when variance not material........................ 2643
failure of proof, not a................ 2644
VENIRE,
in justice's court, in criminal cases... 3633
VENUE,
when actions brought where property is situated...................... 2411
where actions brought, when property in several counties.............. 2412
of actions for specific performance... 2413
when action brought where cause of action arose.................... 2414
actions against domestic corporations 2415
actions against stage and railroad-companies..................... 3416
actions against turnpike companies.. 2417
special charter provisions, for....... 2418
actions against non-residents, and foreign corporations............ 2419
general rules as to—exceptions...... 2420
charge of, when corporation is a party 2421
of *quo warranto* proceedings......... 3100
proceedings, when changed, in criminal actions..................... 3276
in criminal actions.............3403–3406

Section
VENUE—*Continued.*
change of, in justice's court, in civil actions 3441–3448
change of, in justice's court, in criminal proceedings...........3629, 3630
CHANGE OF, IN DISTRICT COURT,
causes for changing in civil action —affidavit.................... 3400
proceedings when change granted —undertaking................. 3401
change in vacation—notice to adverse party 3402
where criminal cases shall be tried. 3403
application for change in criminal case, and proceedings thereon. 3404
when another judge called 3405
to what county change granted—duty of officers............... 3406
when jurisdiction complete after change 3407
but one change granted........... 3408
when application to change shall be made 3409
VERDICT,
discharge of jury before 2558
return of.......................... 2560
reforming 2562
general and special................. 2563
when jury may render general or special........................ 2564
special finding to control general.... 2565
must assess amount of recovery.... 2566
shall be entered by clerk........... 2673
in contest of will.................... 3060
in criminal actions—general provisions 3314–3318
in justice's court, in actions for forcible entry and detainer 3582
in justice's court, in criminal cases... 3642
VERIFICATION OF PLEADINGS,
pleadings must be verified 2489
when not required 2490
when one of several parties may verify.......................... 2491
affidavit, when sufficient 2492
affidavit of non-resident 2493
affidavit shall be signed and certified. 2494
when verification does not apply to amount claimed................ 2495
when affidavit may be made by agent or attorney 2496
effect of verification 2497
VETERINARIAN,
appointment and general duties of 4199–4213
VIEW,
of place or property by jury......... 2554
VIEWERS,
of roads 3862–3864, 3869–3873
VICKERY, G. L.,
claim of in Sweetwater County...... 762
VOTING,
penalty for illegal 1030
WAGES,
exempt from execution, when....... 2831
WAGON ROAD COMPANIES,
may incorporate—rates of toll 526–530
WAIVER,
of right to except to errors in depositions......................... 2635

Section
WAIVER—*Continued.*
of right of demurrer 2451
of trial by jury, if no fee deposited, etc 2567
complete record may be waived..... 2679
WAREHOUSEMEN,
restrictions upon issuing receipts and disposition of property......1048, 1052
lien upon goods.................... 1471
WARD. *See guardian and ward. See lunatics and drunkards.*
WARRANT,
in proceedings to prevent crime..... 3156
for search for stolen property... 3168–3177
for arrest 3181
for arrest in justice's court.....3624, 3625
WARRANT OF ATTORNEY,
in confessions of judgments 2671, 2672
WARRANTS,
COUNTY,
rate of interest upon.............. 1315
how issued 1807
order of payment of 1827
order in which paid 1827
registration and execution of..1829–1831
officers shall be paid in............ 1917
what taxes payable in 3815
order of paying 3816
TERRITORIAL,
how issued 1708
when receivable for taxes 3815
WASHINGTON'S BIRTHDAY,
a legal holiday 1430
WATER COMPANIES. *See ditch companies. See irrigation.*
condemnation proceedings by....... 500
WATER COURSES,
protection of 3900–3904
WATER RIGHTS. *See ditch companies. See irrigation.*
in placer mines 1629, 1630
WEARING APPAREL,
exemptions of...................... 2787
WEIGHTS AND MEASURES,
penalty for selling by false.......... 1006
penalty for using..............1044–1047
standard adopted—superintendent and his salary..................... 4214
purchase of standard for each county 4215
county shall pay for county's standards 4216
specified standards shall be kept by counties......................... 4217
assessor shall be custodian and sealer of weights and measures........ 4218
county standards shall be annually tested.......................... 4219
notice of proving, in county......... 4220
annual sealing in the county........ 4221
expenses, by whom paid............ 4222
fees, of county sealers 4223
sealer shall prove standards, on request 4224
penalty for commissioners refusing to provide standards.............. 4225
penalty for neglect of duty by officers 4226
penalty for using incorrect weights.. 4227
banks must have weights sealed..... 4228
penalty for failure by bank,—spring and platform scales............ 4229
certain cities shall have public scales. 4230

Section
WEIGHTS AND MEASURES—*Continued*
certain standards shall be annually tested.......................... 4231
city weighmasters shall give weight certificates..................... 4232
penalty for violating law............ 4233
WIDOW,
absolute property of................ 2063
appplication for property by......... 2064
absolute property of................ 2231
may relinquish, and take other property or money.................. 2232
rights, not affected by will........... 2233
payments to out of rents............ 2188
when estate delivered to............ 2189
entitled to homestead............... 2782
WIFE. *See married women. Women.*
privileged communication of........ 2589
shall join husband in conveyance of homestead 2784
separate property of, exempt 2789
as to wife's rights of dower, *see laws of congress in appendix.*
WILD ANIMALS,
bounty for wolves, wild cats, etc..... 4234
bounty for gophers, prairie dogs, etc. 4235
fraudulent claims shall be disallowed 4236
WILD CATS,
bounty for destruction of............ 4234
WILLS. *See executors and administrators*
married woman may make.......... 1561
constructive service in actions upon.. 2435
PROBATE OF,
rights of widow not affected by will. 2233
who may make wills............. 2234
devise of land—how construed.... 2235
after acquired property, when to pass under will............... 2236
will, shall be in writing—subscribing witnesses................. 2237
revocation of will, how effected.... 2238
executors—rights and bonds of sole legatee 2239
when court to appoint executors—bonds.......................... 2240
custodian shall produce will....... 2241
notice of proving will............. 2242
certificate of proof and allowance.. 2243
compensation of executors, etc.... 2244
suppressing or re-writing will—penalty 2245
probate of foreign wills........... 2246
all wills shall be probated—effect.. 2247
construction of words............ 2248
wills heretofore executed, not affected....................... 2249
CONTEST OF,
who may contest will............ 3057
necessary parties to action......... 3058
certificate to probate court....... 3059
issue, verdict and judgment....... 3060
order of probate court to be *prima facie* evidence.............. 3061
when testimony given on probate is competent................ 3062
conduct of the trial............... 3063
appeal to supreme court........... 3064
limitation—saving to persons under disability 3065

Section
WIND RIVER VALLEY STOCK GROWERS ASSOCIATION,
privileges of....................4167–4169
WITNESSES. *See subpœna.*
fees of.......................... 1199
all demanded at one time shall be named in one writ.............. 1213
attendance at *habeas corpus* proceedings......................... 1297
fees of, in water rights proceedings.. 1357
at coroner's inquest................ 1881
in probate courts.................. 1981
to making inventory, of personalty of estate—compensation.......2042, 2043
subscribing to will................ 2237
in trial of challenges of jurors, in civil cases......................... 2551
before master commissioners........ 2586
compentency of.................... 2588
opposite party may be made......... 2591
attending court, privileged from arrest in civil actions............. 2805
in examination of judgment debtor.. 2827
before arbitrators................. 2952
perpetuation of testimony of ... 3066–3072
in preliminary examinations—recognizances....................3192–3196
before grand jury 3227–3230
shall be recognized on change of venue, in criminal action 3278
in criminal actions 3289–3293
in justice's court in civil actions.3449, 3456
IN CIVIL ACTIONS,
service of subpœna upon 2594
contents of subpœna—*duce tecum* .. 2595
subpœna on taking depositions 2596
manner of serving subpœna....... 2597
witness cannot be compelled to leave county................ 2598
demand for fees and expenses..... 2599
contempt of court by witnesses.... 2600
proceedings for nontempt by witnesses—punishment.......... 2602

Section
WITNESSES—*Continued.*
attachment against witness....... 2601
release of imprisoned witnesses ... 2603
proceedings on the arrest of witness 2604
examination of witness in prison..: 2605
custody of prisoner, while deposition being taken............. 2606
witness shall not be sued, while obeying subpœna............. 2607
oath of witness.................... 2608
WOMEN'S RIGHTS. *See female suffrage.*
WOMEN. *See married women. See wife.*
when privileged from arrest, in civil action 2805
WOODS,
firing—penalty...................920–922
WORDS,
interpretation of 2337
WOLVES,
bounty for destruction of 4234
WRITS. *See summons; see process.*
in *habeas corpus* proceedings......... 1266
shall be issued by clerks of court.... 2349
alias, when issued.................. 2427
of partition....................... 2966
of possession, in favor of successful claimant to realty 3000
of *mandamus* 3073
of replevin in justice's court....3524, 3525
of attachment in justice's court..3543–3567
in justice's court, of restitution, in actions for forcible entry and detainer 3585
WRIT OF ERROR,
abolished......................... 3149
WRIT OF SUBPŒNA. *See subpœna.*
WYOMING. *See territory.*
WYOMING STOCK GROWERS ASSOCIATION,
shall control round-ups—membership 4108–4116

APPENDIX.

ADDITIONAL LAWS OF CONGRESS.

OWNERSHIP OF LANDS IN THE TERRITORIES.

(Chapter 340, vol. 24, Stat. at Large.)

(In force March 3, 1887.)

SECTION 1. That it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States or of some state or territory of the United States, to hereafter acquire, hold or own real estate so hereafter acquired, or any interest therein, in any of the Territories of the United States or in the District of Columbia, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts heretofore created; *Provided*, That the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they may exist by force of any such treaty shall continue to exist so long as such treaties are in force, and no longer.

SEC. 2. That no corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in any of the Territories of the United States or of the District of Columbia.

SEC. 3. That no corporation other than those organized for the construction or operation of railways, canals or turnpikes shall acquire, hold or own more than five thousand acres of land in any of the Territories of the United States; and no railroad, canal, or turnpike corporation shall hereafter acquire, hold, or own lands in any territory, other than as may be necessary for the proper operation of its railroad, canal, or turnpike, except such lands as may have been granted to it by act of congress. But the prohibition of this section shall not affect the title to any lands now lawfully held by any such corporation.

SEC. 4. That all property acquired, held, or owned, in violation of the provisions of this act shall be forfeited to the United States, and it shall be the duty of the attorney general to enforce every such forfeiture by bill in equity or other proper process. And in any suit or proceeding that may be commenced to enforce the provisions of this act, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the parties concerned in any such proceeding arising out of the matters in this act mentioned.

MARRIAGE, DOWER AND RELIGIOUS SOCIETIES.

(Extracts from chap. 397, vol. 24, Stat. at Large.)

(In force March 3, 1887.)

SEC. 9. That every ceremony of marriage, or in the nature of a marriage ceremony, of any kind, in any of the territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony, and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony, filed in the office of the probate court, or, if there be none, in the office of court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

SEC. 10. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

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SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any territory of the United States, in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

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SEC. 18. (A) A widow shall be endowed of third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage unless she shall have lawfully released her right thereto.

(B) The widow of any alien who, at the time of his death, shall be entitled by law to hold any real estate, if she be an inhabitant of the territory at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen.

(C) If a husband seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(D) When a person seized of an estate of inheritance in lands shall have executed a mortgage, or other conveyance in the nature of a mortgage, of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged or so conveyed, as against every person except the mortgagee or grantee in such conveyance and those claiming under him.

(E) Where a husband shall purchase lands during coverture, and shall at the same time execute a mortgage, or other conveyance, in the nature of mortgage, of his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or grantee in such conveyance or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower in such lands as against all other persons.

(F) Where in such case the mortgagee, or such grantee or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged or so conveyed to be sold, either under a power of sale contained in the mortgage or such conveyance or by virtue of the decree of a court if any surplus shall remain after payment of the moneys due on such mortgage or such conveyance, and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus for her life as her dower.

(G) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the marriage period.

(H) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

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SEC. 26. That all religious societies, sect, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burrial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.